SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 881.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

THE BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLAHOMA, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December term, 1918, of said court, before the Honorable Walter H. Sanborn, the Honorable John E. Carland, and the Honorable Kimbrough Stone, circuit judges.

Attest:

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the second day of November, A. D. 1917, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Western District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit in a certain cause wherein the United States of America was appellant and the board of county commissioners of Osage County, Oklahoma, et al., were appellees, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, is in the words and figures following, to wit:

1 (Citation and Acceptance of Service.)

The United States of America, To the Board of County Commissioners, of Osage County, Oklahoma, to-wit: John A. Gleeson, James Perrier and C. A. Cook, and to T. M. Broaddus, County Clerk of said Osage County, and E. J. McCurdy, County Clerk of said County—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the Clerk's office of the District Court of the United States for the Western District of Oklahoma, wherein the United States of America is appellant and you are appellees to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable John H. Cotteral Judge of the District Court of the United States for the Western District of Oklahoma, this 11th day of October, A. D., 1917.

JOHN H. COTTERAL,
Judge of the District Court of the United States for the Western District of Oklahoma.

Service of the above citation is hereby acknowledged and accepted this 12th day of October, 1917.

PRESTON A. SHINN,
Attorney for Appellees.

Endorsed: Filed in the District Court on October 13, 1917.

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2 (Bill of Complaint.)

In the District Court of the United States for the Western District of Oklahoma.

The United States of America, Plaintiff,
No. 243. vs. In Equity.
The Board of County Commissioners of Osage County, Oklahoma, T. M. Broaddus, County Clerk, and E. J. McCurdy, County Treasurer, Defendants.

To the Honorable John H. Cotteral, Judge of the District Court of the United States for the Western District of Oklahoma:

The United States of America by John A. Fain, United States Attorney for the Western District of Oklahoma, at the instance and request of the Secretary of the Interior and by the direction of the Attorney General of the United States, for itself and as trustee and guardian of the Osage Indian allottees and the heirs of those deceased, hereinafter designated and identified, and as trustee and guardian of all Osage Indian allottees and heirs of those deceased situated similarly to those so designated and identified, brings this its bill of complaint against the defendants, The Board of County Commissioners of Osage County, State of Oklahoma, to-wit: John A. Cleeson, James Perrier and C. A. Cook, members of said Board of County Commissioners, and T. M. Broaddus, County Clerk of said Osage County, and E. J. McCurdy, County Treasurer of said Osage County, all citizens of the United States and of the State of Oklahoma and residents and inhabitants
3 of the Western District of said State, whose more full names are to plaintiff unknown, and plaintiff therefore complains and says:

First.

That the said defendants, John A. Gleeson, James Perrier and C. A. Cook are each citizens of the United States and of the State of Oklahoma, and residents and inhabitants of the Western District of said State and of said County of Osage in said district, and are each members of and altogether constitute the Board of County Commissioners of said County of Osage; and that the said T. M. Broaddus is a citizen of the United States and of the State of Oklahoma, and a resident and inhabitant of the County of Osage in the Western District of said State, and is the duly elected and acting County Clerk of said County of Osage, and the said E. J. McCurdy is a citizen of the United States and of the State of Oklahoma and a resident and inhabitant of the said County of Osage in the Western District of said State and is the duly elected,

qualified and acting County Treasurer of said County of Osage and is charged with the collection of delinquent taxes in said county and with the sales of land for the payment of delinquent taxes.

Second.

That this bill of complaint and action is brought by plaintiff by the direction and authority aforesaid, on behalf of itself and for the benefit and protection of and as the guardian and trustee of the various Osage Indian Allottees in Oklahoma and the heirs of those deceased, hereinafter desig-
4 nated and identified, and of their lands hereinafter described, and for the benefit and protection of all such Osage Indian Allottees and the heirs of those so designated and identified and their lands as are similarly situated to those so designated and identified, those similarly situated being so numerous that it would be inconvenient and impracticable to name them and describe their lands herein.

Third.

That heretofore plaintiff was the owner in fee and held in trust for the Osage Tribe of Indians in Oklahoma the Osage Indian Reservation in the Territory of Oklahoma, now Osage County, State of Oklahoma, as evidenced by a certain indenture of conveyance executed by Dennis Bushyhead, Richard M. Wolfe and Robert B. Ross, duly empowered on behalf of the Cherokee Tribe of Indians, under date of June 14th, 1883, by the terms of which said deed of trust and of the law applicable thereto the plaintiff became seized of an estate in fee in the lands of the said Osage Indian Reservation in trust however for the said Osage tribe of Indians and then and thenceforth plaintiff was the owner and holder of said lands and permitted the said Osage Tribe of Indians to occupy the same under the authority of the United States.

Fourth.

That under and by virtue of an Act of Congress entitled "An Act for the Division of the Lands and Funds of the Osage Indians in Oklahoma, and for other purposes," approved June 28, 1906 (34 Stat. L. 539), plaintiff, through its proper officers and agents, allotted to the members of the Osage Tribe
5 of Indians constituting the roll of said Tribe as in said Act provided certain subdivisions or selections to each of said members respectively, subject, respectively, to all the conditions, restrictions and limitations as in said Act provided, the selections so made for or on behalf of each member being designated, respectively, as homestead and surplus selections.

Fifth.

That under and by virtue of an Act entitled, "An Act authorizing the Secretary of the Interior to sell part or all of the surplus lands of members of the Kaw or Kansas and Osage tribes of Indians in Oklahoma, and for other purposes", approved March 3, 1909, the Secretary of the Interior is authorized and empowered, upon application, to sell, under such rules and regulations as he may prescribe, part or all of the surplus lands of any member of the Kaw or Kansas and Osage Tribes of Indians in Oklahoma; provided that the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas and other materials.

Sixth.

That under and by virtue of an Act of Congress of June 28, 1906, hereinafter designated the Osage Allotment Act, the plaintiff, through its proper officers and agents, allotted to certain members of the Osage Tribe of Indians certain tracts or selections embraced within the Osage Reservation, the owners of such selections and the descriptions thereof being identified and designated by the attached memorandum or schedule, marked "A", and the allotments so made were
6 duly conveyed to the said Indians in the manner and form required by the said Allotment Act, subject to all the provisions thereof relating to alienation, taxation, or otherwise.

Seventh.

That the Constitution of the State of Oklahoma, in conformity with the provisions of what is generally known as the Enabling Act, providing for the formation of a state government and the admission of Oklahoma and Indian Territories into the Union as a State, approved June 16th, 1906, (34 Stat. L. 267) provides that the people inhabiting the State of Oklahoma do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying in the boundaries thereof, and to all lands lying in said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal and control of the United States; and also provides that such property as may be exempt by reason of treaty stipulations existing between the Indians and the United States government, or by Federal laws, shall be exempt from taxation.

Eighth.

That this plaintiff is charged with the duty of supervising the use and occupancy of all of the said lands hereinbefore mentioned and the protection thereof and the protection of the allottees and heirs thereof in their possession of said
7 lands and with respect thereto and to protect the possession of lessees of said lands, if any there be, under leases thereof duly made with the approval which is required of the Honorable Secretary of the Interior in accordance with the provisions of said Osage Allotment Act; and with preventing the alienation or encumbrance of said lands contrary to the provisions of said Allotment Act. That all and every part of said lands are subject to the general supervision, control and jurisdiction of the plaintiff as provided by the Acts of Congress and particularly the said Osage Allotment Act, and said lands and every part thereof, as plaintiff is informed and advised and believes, are inalienable and exempt from sale to enforce collection of taxes for state, county or other municipal purposes, under the laws of the United States and especially those herein referred to.

Ninth.

That the said Board of County Commissioners constitute the executive and governing board of said Osage County and should respond and answer to any action against said County; and under the laws of said State of Oklahoma the said County Treasurer is given power to advertise and to sell lands which have been assessed and returned for taxation and against which taxes have been extended and the rolls and certificates thereof delivered to said County Treasurer, and on which lands levied taxes remain unpaid and become delinquent. That the assessors, whose names are to the plaintiff unknown, and the said County Clerk of said
8 County, or their predecessors in office, heretofore, during the years 1910 to 1917 inclusive, noted the lands herein involved, to be assessed for taxes in said County for said years and as taxable on March 1st of said years to be entered upon the tax rolls of said County, and the taxes charged against said lands to be extended upon the tax rolls of said County, and the said Board of County Commissioners, or their predecessors in office, levied the taxes so assessed against said lands in several respective amounts, the particular amount of taxes assessed and levied against each of said tracts of land being in a large sum of money, the several respective amounts thereof being to the plaintiff unknown, and the aggregate amount thereof being to plaintiff unknown, and caused the tax rolls of said County made and prepared dur-

ing the years 1910 to 1917 inclusive to be delivered to said County Treasurer, or his predecessors in office, with certificate and authority to collect the several sums and taxes so levied, extended and charged on said tax rolls against the several tracts of land, respectively, herein involved, and to sell any and all of said lands to pay any of such taxes becoming delinquent thereon. That none of the taxes levied against said lands have been paid and all and every part of the taxes levied against each and every parcel of said described tracts of land, as herein included, identified and designated, have become and are delinquent, except as to the year 1917; and plaintiff is informed and believes that the said County Treasurer, acting by and under the authority from the said County Commissioners, intends to and will advertise and sell all of the said lands for the payment of such delin-
9 quent taxes so levied and assessed as aforesand and penalties thereon unless the said defendants herein are restrained from so doing by the judgment and order of this court; that the sale of said lands for taxes would impose upon plaintiff a multiplicity of suits to avoid such sales and clear the titles to said lands.

Tenth.

That plaintiff is informed and believes and alleges to be the fact that the said taxes so assessed, levied and extended against said lands are taxes for state, county and other municipal purposes in the State of Oklahoma, and that all and every part of said lands are exempt from sale to enforce collection of such taxes, and that the defendants, or their predecessors in office, have wrongfully and unlawfully levied such tax, and that said defendants will sell said lands in payment thereof in violation of the rights of said Indian allottees and Indian heirs and in defiance of the duty and authority of this plaintiff unless the said defendants are restrained and enjoined from so doing, and that plaintiff has no other plain, speedy, adequate and complete remedy at law.

Eleventh.

Plaintiff further states that in the year 1910 no demand was made upon the owners of the lands herein involved for a schedule of their real and personal property, as required by Section 7321 of the Oklahoma Code of 1910; that no notice was given them of the amount of the tax assessed upo.. their respective lands, or the date when said tax became due,
10 or the date when it became delinquent, as required by Section 7389 of said Code; and, furthermore, that by Act of the Legislature of Oklahoma, approved February 3,

1915 (Session Laws of Oklahoma, Chapter 8, page 9), the time for the payment of all taxes was extended to June 1, 1915, with a provision that if such taxes then remained unpaid the same should bear a penalty at the rate of eighteen per cent. (18%) per annum.

That all of the persons herein whose allotments were so assessed and who were thus deprived of notice are and were, under the laws of the United States, and especially the said Osage Allotment Act, wards of the Government, held in a state of pupilage as a dependent people, whose persons and property were and are under the control and supervision of the Secretary of the Interior, being members of the so-called Non-competent or Restricted class of Indians, many of whom were, in the year 1910, and now are otherwise under the legal disability of minority; that there was no law authorizing the appointment of guardians for such minors until it was provided by the Act of Congress approved April 18, 1912, the County Court should have authority to appoint such guardians, but with the proviso "that no guardian shall be appointed for a minor whose parents are living, unless the estate of such minor is being wasted or misused by such parents," and that the said minors and the other persons herein who are under legal disability are entitled, if it shall be held that it was the duty of the Osage Indians, independently of any action by the United States, to pursue the remedy prescribed by the statutes of Oklahoma with respect to unlawful and improper assessments, to the benefits of Section 4658 of the Oklahoma Code, which provides:

11

"If a person entitled to bring an action other than for the recovery of real property, except for a penalty or forfeiture, be, at the time the cause of action accrued, under any legal disability, every such person shall be entitled to bring such action within one year after such disability shall be removed."

The assessments for the year 1910 were also arbitrary, grossly excessive, discriminatory, and unfair, and were made in violation of the rights of the said Osage Indians guaranteed by the Constitution of the United States and the Constitution of the State of Oklahoma, as more fully shown hereinafter.

Twelfth.

That the assessments for the year 1911 on the lands of these Indians, herein included, identified and described, are subject to objection on substantially all grounds hereinbefore recited in connection with the assessments for the year 1910, and in

addition thereto plaintiff says that the State Board of Equalization of the State of Oklahoma arbitrarily and systematically increased the assessments on Osage Indian Lands for the year 1911 to an amount approximately nearly double the original amount of such assessments, and that such action was taken without notice to the taxpayers and without any real or substantial effort to distinguish between assessments which had been made at the true value of the said lands and assessments which were not so made, in violation of the requirements of notice contemplated by Section 7366 of the Oklahoma Code, and Section 11, Chapter 152, of the Session Laws of 1911.

Thirteenth.

That the tax assessments on the lands herein [indentified] and described for the years 1912, 1913 and 1914 were
12 made in practically the same manner and the same amounts on the respective tracts as for the year 1910, and are subject substantially to the same objections, both as to the parties, the amounts originally assessed, and the penalties claimed for failure to pay the same.

Fourteenth.

That the facts concerning the tax assessments of said lands for the years 1915, 1916 and 1917, and the [proceedure] followed in connection therewith, and the persons affected, are substantially the same as those for the years 1912, 1913, and 1914, save that the Act of the Legislature of Oklahoma, approved February 3, 1915, supra, provided in connection with the payment of delinquent penalties that the taxpayer shall not be entitled to notice, with the further exception that the taxes for the year 1917 are not yet due or delinquent, altho the assessments for that year were arbitrarily and unjustly made and are unfair and discriminatory, as in the case of the [proceding] years.

Fifteenth.

That plaintiff is informed and believes and alleges to be true that the so-called tax assessments made by the assessors for Osage County on the lands herein involved for the years referred to above were made without an inspection or examination of the land and without adequate knowledge of the facts determinative of the value thereof; that the valuations fixed upon said lands by said appraisers were determined merely by an office appraisement; that said valuations were determined in an arbitrary and capricious manner and
13 were lacking in the element of judgment to such an extent as to constitute in law and fact no appraisement

at all; that the said appraisers in making said appraisements discriminated against the lands of the Osage Indians as a class and systematically overvalued the same and systematically undervalued other property in said County; that the said appraisers in making said appraisements intentionally proceeded in disregard of the true value of the land by adopting arbitrarily a minimum value of appraisement per acre as the basis of their assessments; that the assessments so made by said assessors were made in such an arbitrary and capricious manner as to amount to constructive fraud upon the taxpayers, and that the overvaluations made by said assessors were so grossly excessive as to justify the interference of a court of equity; that as a result of the failure of said assessors to proceed in a lawful and proper manner, the Osage Indians and their heirs herein involved will, if their said lands are sold to enforce collection of taxes, be deprived of rights guaranteed by the Constitution of the United States and the Constitution of the State of Oklahoma, and particularly in violation of the following provisions of said Constitutions:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."—Const. U. S., Sec. 1, 14th Amendment.

* * * * * * * * *

" - - - - taxes shall be uniform upon the same class of subjects - - - - ."—Okla. Const., Sec. 5, Art. X.

14 "All property which may be taxed ad valorem shall be assessed for taxation at its fair cash value, estimated at the price it would bring at a fair voluntary sale; and any officer, or other person authorized to assess values, or subjects, for taxation, who shall commit any wilful error, in the performance of his duty, shall be deemed guilty of malfeasance, and upon conviction thereof shall forfeit his office, and be otherwise punished as may be provided by law."—Okla. Const., Sec. 8, Art. X.

Sixteenth.

That the plaintiff further represents and alleges to be the fact that the Secretary of the Interior, through his proper officers, attempted early in the year 1916 to secure an adjust-

ment of the controversy relating to the payment of Osage taxes and to excessive taxes thereon, but it was found that no proper basis of adjustment existed, in that there never had been a true and correct appraisement of the lands allotted to the Osage Indians; that the Secretary of the Interior thereupon presented the matter to the proper committees of Congress with recommendation that appropriate legislation be provided for the appraisement of said lands; that as the result of the presentation of the matter to the committees of Congress, an Act was passed by Congress, which was approved on March 2, 1917, recognizing the existence of the controversy, the necessity for an adjustment of the differences involved in connection therewith, and providing for an appropriation of $5,000.00 of the moneys belonging to the Osage Indians for the purpose of defraying the expenses of such appraisement; that the Act making said appropriation reads as follows:

"That the Secretary of the Interior is hereby authorized to cause an appraisement to be made, on a fair and reasonable basis, by distinterested appraisers, of all lands of Osage
15 County, Oklahoma, owned by Osage Indians as allottees or as heirs of tribal members, and the appraisement so made may be taken as a basis for the adjustment and settlement of any exception or claim made by any such Indian or by any officer of the United States in his behalf with respect to any assessment heretofore made or that may hereafter be made prior to July first, nineteen hundred and seventeen; and the Secretary of the Interior is hereby authorized to use the sum of $5,000.00, or so much thereof as may be needed, from the funds of the Osage tribe to defray the expense of such appraisement."

That immediately after said Act became effective appraisers were appointed by the Secretary of the Interior for the purpose of appraising the lands of the Osage Indians as therein directed, and that the work of making such appraisement has proceeded to a point nearing completion, but that the work of finally tabulating the results has not been finished; that the men who made such appraisements have a full and accurate knowledge of land values in Osage County and have the confidence of the officers and citizens of said County; that the appraisements made by said appraisers were and are based upon an actual inspection of the lands in question and represent the exercise of judgment on the part of said appraisers after careful and thorough consideration of all material facts touching upon the value of the said lands; that plaintiff further says and alleges to be true that the appraisement so made under said Act of March 2, 1917, is the first and only true and

complete appraisement of the lands of Osage Indians in Osage County Based upon a knowledge of the facts in the exercise of judgment and discretion, and that the valuations fixed by said appraisers are correct, representing the true and correct value of said lands as of the year 1917 and represent
16 the fair cash value of said lands as estimated at the price said lands would bring at a fair voluntary sale, and that the present value of said lands is materially greater than at any prior time since the allotment thereof to the Osage Indians herein identified and designated.

Seventeenth.

That plaintiff is informed and believes and alleges to be the fact that one Franklin Hickman is a non-competent Osage allottee and a minor and a member of one of the classes of Osage Indians involved herein; that the said Hickman was the party plaintiff in a certain proceeding instituted in the District Court of Osage County against the County Board of Commissioners of said County, and that a stipulation was made a part of the record in said case, signed by the attorneys for Hickman and by the then County Attorney for Osage County, admitting to be true the allegations in said plaintiff's bill that lands included in Hickman's allotment were assessed by the County assessor at $20.00 per acre when the true value of such lands was $3.00 per acre.

That one E-kah-pah-she is a non-competent Osage minor and a member of one of the class of Indians involved in this proceeding; that the allotment of said minor was assessed by the assessors acting under authority of the Oklahoma statutes during the years 1910 to 1916, inclusive, as follows: 1910, $4953; 1911, $7467; 1912, $4633; 1913, $4632; 1914,
17 $4625; 1915, $3385; 1916, $3385, or at an average annual assessment of $4725 for said years, and that the same lands were appraised by the appraisers acting under said Act of Congress of March 2, 1917, at $2155, showing an average overvaluation of about 119 per cent.

That the appraisements of the lands of the Osage Indians specifically mentioned under this heading are typical of the appraisements that were made under the authority of the United States and the State of Oklahoma, respectively, on the allotments of the other Osage Indians on behalf of whom this proceeding is instituted, and that the difference between the amount of said appraisements, while varying in degree and amount, is so great in all cases that it cannot be accounted for by reason of a difference of judgment fairly exercised, and

that it would amount to a confiscation of the property of these Indians to compel them to pay taxes based upon the excessive valuations fixed by the State authorities.

That it has been impossible for the representatives of the Interior Department, up to the present time, to compile a complete statement showing the respective Federal and State appraisements of all Osage Indians involved herein, but that plaintiff represents and alleges that the attached schedule or memorandum, marked "B", hereto appended, is typical of and represents substantially the appraisements made by said Federal and State officers.

Eighteenth.

That the plaintiff, on behalf of the Osage Indians and their heirs, as herein included, identified and designated,
18 whether specifically or in general terms, represents and says that the United States, as guardian of said Indians and as trustee of their funds, is willing and stands ready to pay and hereby agrees to pay, at such time and place as the Court may direct, from funds held in trust for them by the United States, to the County Treasurer for Osage County, in full payment of the taxes and penalties due from said Indians on their said lands, such sum as shall be lawfully due from them, and in accordance with such rule or standard of appraisement and [and] computation as equity may require. And in order that such payment may be made promptly and justly, plaintiff represents and says that the United States is willing to take and accept the appraisement, when completed, made by the Federal appraisers under said Act of March 2, 1917, as the fair cash value of each tract appraised by them, herein involved, and to accept such appraisement in every case as the basis of adjustment, as authorized by said Act, of any claim made by or on behalf of any Indian with reference to any assessment made prior to July 1, 1917.

That the plaintiff is willing, and hereby offers and agrees, to tender to the County Treasurer for Osage County as the Court may direct, the official check of the Special Disbursing Agent for the Osage Agency on the Treasurer of the United States in the amount of $....., or any such other amount as the Court may require, such payment to approximate the amount due, with the assurance that further payments will be made at the earliest date practicable and as soon as necessary computations can be made to determine the total amount of such taxes until final and complete payment
19 is made thereof.

Nineteenth.

To the end, therefore, that plaintiff may have that relief which it can only obtain in a court of equity, and that the said defendants may answer the premises, but not upon oath or affirmation, an answer under oath being hereby expressly waived by plaintiff, may it please Your Honor to grant unto plaintiff a writ of injunction pendente lite issued out of and in accordance with the rules and practice of this Honorable Court, to be directed to the said defendants, the Board of County Commissioners of said Osage County, to be served upon said Board as provided by law, and to the said T. M. Broaddus, County Clerk, and to the said E. J. McCurdy, County Treasurer, as aforesaid, enjoining and restraining them, their agents, servants, employees and confederates from selling or offering for sale any of the tracts of land belonging to any of the Osage Indians or their heirs, herein included, identified and designated, or any part thereof, whether identified in general or specific terms, and from interfering in any manner with said lands, or any part thereof, or from making any record showing the sales or the offer for sale of any of such lands, and from issuing any tax sale certificate or other certificate or deed touching or effecting any of said land; and from in any manner hindering or obstructing plaintiff, its agents, officers, servants or employees, or any or either of them, in the performance of its duties as guardian and trustee over said Indians and lands, and from in any manner encumbering the right, title or claim to said lands; and that at the final hearing the said injunction be made perpetual. Plaintiff also prays that a decree be entered herein by this Honorable Court authorizing and directing an adjustment and settlement as hereinbefore suggested of all claims growing out of the failure of the Osage Indians and their heirs, on behalf of whom this action is instituted, to pay the taxes justly due upon the allotments in question, both as to the amount of the taxes assessed upon said lands and the amounts alleged to be due as penalties in connection therewith, and that plaintiff may have such other and further relief in the premises as the nature and circumstances in the case may require;

And may it please your Honor to grant to the plaintiff a writ or writs of subpoena to be directed to the said Board of County Commissioners, to-wit, John A. Gleeson, James Perrier and C. A. Cook, members of said Board of County Commissioners of Osage County, Oklahoma, and to the said T. M. Broaddus, County Clerk of said County, and to the said E. J. McCurdy, County Treasurer of said County, thereby commanding them at a time certain and under a certain penalty

therein to be limited, to personally appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform and abide by such orders, direction and decrees as may be made against them, or either of them, in the premises as shall be just and equitable, and that plaintiff may recover its costs herein expended.

JOHN A. FAIN
United States Attorney.

21 United States of America,
Western District of Oklahoma—ss.

State of Oklahoma,
Garfield County—ss.

Arthur T. Woodward, being first duly sworn, on oath states that he has read the foregoing bill and knows the contents thereof, and that the allegations therein contained are true, except such allegations as are upon information and belief, and as to those he verily believes them to be true.

ARTHUR T. WOODWARD.

Subscribed and sworn to before me this 27 day of September, 1917.

(Seal) FRANK T. McCOY,
Deputy Clerk U. S. District Court,
Western District of Oklahoma.

United States of America,
Western District of Oklahoma,
Garfield County—ss.

John A. Fain, United States Attorney, of lawful age, being first duly sworn, says that he is such officer and agent of the plaintiff herein, and that the allegations and averments in said bill of complaint contained are true, as he is informed and verily believes.

JOHN A. FAIN.

Subscribed and sworn to before me this 27 day of September,
(Seal) FRANK T. McCOY,
Deputy Clerk U. S. District Court,
Western District of Oklahoma.

22 "A"

Schedule, or memorandum, referred to in Paragraph "Sixth" of Plaintiff's Bill, in the case of United States of America, Plaintiff, vs. Board of County Commissioners of Osage County, Oklahoma, et al., Defendants.

(All descriptions subject to correction.)

No. 1. Wah-shin-kah-soppy, adult non-competent Osage allottee No. 63. (Living)

Description of surplus allotment:

The Northeast quarter and Lot One (1) of Section Thirty-five (35), Township Twenty-two (22) North of Range Seven (7) East I. M.; The East Half of the Southeast Quarter of Section Nine (9), Township Twenty-one (21) North of Range Seven (7) East I. M.; The Southwest Quarter of the Northeast Quarter, and the Northwest Quarter of the Southeast Quarter of Section Ten (10), Township Twenty-one (21) North of Range Seven (7) East I. M.; The South Half of the Northwest Quarter and the North Half of the Southwest Quarter of Section Ten (10) Township Twenty-one (21) North of Range Seven (7) East I. M.

No. 2. Bessie E. Edminston, minor non-competent Osage allottee No. 1230.

(Living)

Description of surplus allotment:

The Southeast Quarter of Section Four (4), Township Twenty-six (26) North of Range Five (5) East I. M.; the Northeast Quarter of the Southeast Quarter of Section Twenty-two (22), Township Twenty-six (26) North of Range Five (5) East I. M.; The West Half and the Southeast Quarter of the Northeast Quarter of Section Twenty-three (23), Township Twenty-six (26) North of Range Five (5) East I. M.; The Southwest Quarter of the Northeast Quarter and the Southeast Quarter of Section Nine (9), Township Twenty-six (26) North of Range Ten (10) East I. M.

No. 3. Me-tsa-he, deceased adult non-competent Osage allottee No. 57.

Description of surplus allotment:

The Northwest Quarter of Section Thirty-six (36), Township Twenty-two (22) North of Range Seven (7) East I. M.; the Northeast Quarter and the Southeast Quarter of Section Four (4), township Twenty-one (21) North of Range Seven (7) East I. M.; Fraction of Section Thirty-four (34), Township Twenty-two (22) North of Range Seven (7) East I. M.

Sole heir: Wah-shin-kah-soppy, adult non-competent Osage allottee No. 63.

No. 4. Wah-shah-she-me-tsa-he, deceased non-competent Osage allottee No. 32.

Description of surplus allotment:

The Northeast Quarter of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section Nineteen (19), Township Twenty-eight (28) North of Range Seven (7) East I. M.; The Northwest Quarter of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of
23 Section Twenty (20), Township Twenty-eight (28) North of Range Seven (7) East I. M.; Lots Three (3) and Four (4) and the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section Three (3), Township Twenty-one (21) North of Range Seven (7) East I. M.; The North Half of the Northwest Quarter of Section Ten (10), Township Twenty-one (21) North of Range Seven (7) East I. M.; The Southwest Quarter of the Southwest Quarter; the North Half of the Southeast Quarter of the Southeast Quarter of the Northeast Quarter; the Northeast Quarter of the Southeast Quarter of the Northeast Quarter; and the South Half of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section Thirty-four (34), Township Twenty-two (22) North of Range Seven (7) East I. M.

Sole heir: Amos Hamilton, non-competent Osage allottee No. 392.

No. 5. Arthur Rogers, deceased Osage allottee No. 1810. (competent adult)

Description of homestead allotment:

The East Half of the Northeast Quarter of Section Seven (7), Township Twenty-three (23) North of Range Four (4) East I. M.; The West Half of the Southwest Quarter of Section Eight (8), Township Twenty-three (23) North of Range Four (4) East I. M.

Heirs: Joseph Rogers, minor Osage allottee No. 1812; Ellen Rogers, minor Osage allottee No. 1813;
John Rogers, minor Osage allottee No. 1814;
William Rogers, minor Osage allottee No. 1815;
Isabelle Rogers, minor Osage allottee No. 2173;

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24 "B"

Schedule, or memorandum, referred to in Paragraph "Sixteenth" of Plaintiff's Bill, in the case of United States of America, Plaintiff vs. Board of County Commissioners of Osage County, Oklahoma, et al.

Allotment of Wah-shin-kah-soppy, adult non-competent Osage Allottee No. 63.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917;
1910	$8240.00	
1911	6510.00	
1912	4140.00	$2000.00
1913	4800.00	
1914	4800.00	
1915	5540.00	
1916	5538.00	

Allotment of Me-tsa-he, deceased non-competent Osage allottee No. 57.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$6370.00	
1911	5085.00	
1912	3630.00	$1986.00
1913	3367.00	
1914	3524.00	
1915	5050.00	
1916	4052.00	

Allotment of Bessie E. Edminston, minor non-competent Osage Allotte No. 1230.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4966.00	
1911	5949.00	
1912	3893.00	$1718.00
1913	3973.00	
1914	3892.00	
1915	4460.00	
1916	4460.00	

Allotment of A-non-to-oppe, deceased non-competent Osage Allottee No. 180.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4555.00	
1911	6833.00	
1912	4235.00	$2148.00
1913	4235.00	
1914	4235.00	
1915	4495.00	
1916	4502.00	

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25 Allotment of To-pah-moie, deceased non-competent Osage Allottee No. 303.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4440.00	
1911	6100.00	
1912	3320.00	$2060.00
1913	3320.00	
1914	3320.00	
1915	3180.00	
1916	3178.00	

Allotment of Me-gra-ta-me, minor non-competent Osage [allotee] No. 239.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4075.00	
1911	5675.00	
1912	3915.00	$2380.00
1913	3915.00	
1914	3915.00	
1915	4315.00	
1916	4317.00	

Allotment of Maude Tinker, Non-competent Osage allottee No. 1987.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$6124.00	
1911	8256.00	
1912	6116.00	$2123.00
1913	6116.00	
1914	6091.00	
1915	7000.00	
1916	7000.00	

Allotment of Me-gra-to-me, adult non-competent Osage Allottee No. 702.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$5860.00	
1911	7860.00	
1912	3300.00	$2050.00
1913	3300.00	
1914	3300.00	
1915	3455.00	
1916	3453.00	

Allotment of Dudley Haskell, adult Non-competent Osage allottee No. 236.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4600.00	
1911	5700.00	
26 1912	3280.00	$2340.00
1913	3280.00	
1914	3280.00	
1915	3775.00	
1916	3773.00	

Allotment of Alfred Hall, minor non-competent Osage allottee No. 1285.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4272.00	
1911	7906.00	
1912	3214.00	$1760.00
1913	3214.00	
1914	3214.00	
1915	3740.00	
1916	3738.00	

Allotment of Nah-hah-sah-me, adult non-competent Osage allottee No. 436.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4275.00	
1911	6313.00	
1912	4275.00	$2020.00
1913	4275.00	
1914	4075.00	
1915	3410.00	
1916	3410.00	

Allotment of Ah-hu-scah, adult non-competent Osage Allottee No. 686.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$4115.00	
1911	4748.00	
1912	3875.00	$2060.00
1913	3875.00	
1914	3875.00	
1915	4455.00	
1916	3518.00	

Allotment of Sin-ta-wah-kon-tah, deceased non-competent Osage Allottee No. 299.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917.
1910	$5722.00	
1911	6023.00	
1912	4619.00	$2200.00
1913	4617.00	
1914	5094.00	
1915	4115.00	
1916	4113.00	

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27 Allotment of Josephine Soldani, adult non-competent Osage allottee No. 1892.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4755.00	
1911	6893.00	
1912	3755.00	$2120.00
1913	3755.00	
1914	3755.00	
1915	4320.00	
1916	4307.00	

Allotment of Ki-he-kah-tun-kah, adult non-competent Osage allottee No. 752.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4840.00	
1911	6780.00	
1912	2340.00	$2280.00
1913	2420.00	
1914	2420.00	
1915	2785.00	
1916	2783.00	

Allotment of Mary E. Evans, adult non-competent Osage allottee No. 1266.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4314.00	
1911	6471.00	
1912	3994.00	$2237.00
1913	4000.00	
1914	3760.00	
1915	4325.00	
1916	4326.00	

Allotment of Ethel Goad, minor non-competent Osage allottee No. 2148.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$5000.00	
1911	7500.00	
1912	3000.00	$2570.00
1913	3000.00	
1914	3000.00	
1915	2875.00	
1916	2875.00	

Allotment of Virgil Simpkins, minor non-competent Osage allottee No. 1881.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$5273.00	
1911	7908.00	
1912	3766.00	$$2432.00
28 1913	3766.00	
1914	3766.00	
1915	3115.00	
1916	3113.00	

Allotment of Ora Tinker, non-competent Osage allottee No. 1973.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4765.00	
1911	6388.00	
1912	4766.00	$2278.00
1913	4766.00	
1914	4766.00	
1915	5533.00	
1916	5530.00	

Allotment of Villa Tinker, minor non-competent Osage allottee No. 1982.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4100.00	
1911	4380.00	
1912	3441.00	$1735.00
1913	3440.00	
1914	3440.00	
1915	2665.00	
1916	2667.00	

Allotment of Cecil Martin, minor non-competent Osage Allottee No. 425.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$2909.00	
1911	4517.00	
1912	3010.00	$2175.00
1913	3008.00	
1914	3008.00	
1915	3455.00	
1916	3455.00	

Allotment of Joseph Riddle, adult non-competent Osage allottee No. 1792.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$2930.00	
1911	4395.00	
1912	2930.00	$2240.00
1913	2930.00	
1914	2930.00	
1915	3600.00	
1916	3510.00	

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29 Allotment of Sherman Riddle, adult non-competent Osage allottee No. 1791.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$3100.00	
1911	4650.00	
1912	3100.00	$2403.00
1913	3100.00	
1914	3100.00	
1915	3560.00	
1916	3380.00	

Allotment of John Kenny, adult non-competent Osage allottee No. 257.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$3519.00	
1911	4309.00	
1912	3709.00	$2527.00
1913	3709.00	
1914	3709.00	
1915	3155.00	
1916	3152.00	

Allotment of Hlu-ah-to-me, deceased non-competent Osage allottee No. 682.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$3320.00	
1911	4320.00	
1912	3300.00	$2150.00
1913	3100.00	
1914	3100.00	
1915	3530.00	
1916	3530.00	

Allotment of Me-tsa-he, adult non-competent Osage allottee No. 653.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4900.00	
1911	4380.00	
1912	3800.00	$3200.00
1913	3800.00	
1914	3800.00	
1915	4005.00	
1916	4003.00	

Allotment of Me-tsa-he, adult non-competent Osage allottee No. 685.

County Appraisement:

1910	$2495.00
1911	1497.00
1912	3293.00
1913	3300.00
1914	3300.00
1915	3895.00
1916	3895.00

Appraisement under Act of Congress approved March 2, 1917:

$2075.00

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30 Allotment of Son-se-grah, adult non-competent Osage allottee No. 237.

County Appraisement:

1910	$4875.00
1911	6354.00
1912	3275.00
1913	3275.00
1914	3275.00
1915	3762.00
1916	3762.00

Appraisement under Act of Congress approved March 2, 1917:

$2580.00

Allotment of Gra-tah-su-ah, adult non-competent Osage allottee No. 250.

County Appraisement:

1910	$4075.00
1911	6075.00
1912	3260.00
1913	3260.00
1914	3275.00
1915	3750.00
1916	3754.00

Appraisement under Act of Congress approved March 2, 1917:

$2300.00

Allotment of E-kah-pah-she, minor non-competent Osage allottee No. 189.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$4953.00	
1911	7467.00	
1912	4633.00	$2155.00
1913	4632.00	
1914	4625.00	
1915	3385.00	
1916	3385.00	

Allotment of Edgar McCarthy, adult non-competent Osage allottee No. 388.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$3920.00	
1911	3180.00	
1912	3200.00	$2870.00
1913	3200.00	
1914	3200.00	
1915	3680.00	
1916	3678.00	

Allotment of Nora T. Revard, non-competent Osage allottee No. 1774.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$2840.00	
1911	2760.00	
1912	2500.00	$2160.00
1913	2500.00	
31 1914	2500.00	
1915	2885.00	
1916	2885.00	

Allotment of Elsie E. Breeding, minor non-competent Osage allottee No. 1014.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$2970.00	
1911	4455.00	
1912	2970.00	$2220.00
1913	2970.00	
1914	2950.00	
1915	3420.00	
1916	3420.00	

Allotment of Clinton Bigheart, adult non-competent Osage allottee No. 169.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$3295.00	
1911	4853.00	
1912	2955.00	$2506.00
1913	2955.00	
1914	2955.00	
1915	3405.00	
1916	3402.00	

Allotment of Martha B. Barker, minor non-competent Osage allottee No. 920.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$5065.00	
1911	7598.00	
1912	4505.00	$2140.00
1913	4745.00	
1914	4195.00	
1915	2885.00	
1916	2884.00	

Allotment of Wah-shah-she-me-tsa-he, deceased non-competent Osage allottee No. 32.

County Appraisement:		Appraisement under Act of Congress approved March 2, 1917:
1910	$6435.00	
1911	6060.00	
1912	4100.00	$1207.16
1913	4100.00	
1914	3800.00	
1915	3635.00	
1916	3635.00	

32 Bill of Complaint, Endorsed: Filed in the District Court on Sept. 27, 1917.

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33 (Certified Copy of Order to show cause with proof of service.)

On reading and consideration of the verified Bill in the above entitled suit, and for other good cause shown, it is ordered that the above named defendants in this cause, and each of them, be and appear in this Court at the Courtroom in the City of Enid, in the County of Garfield, Western District of Oklahoma, on the 3rd day of October, 1917, at the hour of ten o'clock a. m., then and there to show cause, if any they can, why a writ of injunction should not issue in this cause enjoining and restraining said defendants and each of them, their agents, servants and employees, and until the further order of this Court, from selling or offering for sale, at any delinquent tax sale, any of the lands set out in plaintiff's Bill of Complaint, and any lands of Osage allottees, or their heirs, situated similarly to those set out in said Bill of Complaint, which said lands are all situated in Osage County, Oklahoma, and are described as follows, as to those allottees specifically mentioned in said Bill, to-wit:

34 Surplus lands allotted to Wah-shin-kah-soppy, Osage allottee No. 63:

The Northeast Quarter and Lot One (1) of Section Thirty-five (35), Township Twenty-two (22) North of Range Seven (7) East I. M.; The East Half of the Southeast Quarter of Section Nine (9), Township Twenty-one (21) North of Range Seven (7) East I. M.; The Southwest Quarter of the Northeast Quarter and the Northwest Quarter of the Southeast Quarter of Section Ten (10), Township Twenty-one (21) North of Range Seven (7) East I. M.; The South Half of the Northwest Quarter and the North Half of the Southwest Quar-

ter of Section Ten (10), Township Twenty-one (21) North of Range Seven (7) East I. M.

Surplus lands allotted to Bessie E. Edminston, minor Osage allottee No. 1230:

The Southeast Quarter of Section Four (4), Township Twenty-six (26) North of Range Five (5) East I. M.; The Northeast Quarter of the Southeast Quarter of Section Twenty-two (22), Township Twenty-six (26) North of Range Five (5) East I. M.; The West Half and the Southeast Quarter of the Northeast Quarter of Section Twenty-three (23), Township Twenty-six (26) North of Range Five (5) East I. M.; the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of Section Nine (9), Township Twenty-six (26) North of Range Ten (10) East I. M.

Surplus lands allotted to Me-tsa-he, Osage allottee No. 57; deceased:

The Northwest Quarter of Section Thirty-six (36), Township Twenty-two (22) North of Range Seven (7) East I. M.; The Northeast Quarter and the Southeast Quarter of Section Four (4), Township Twenty-one (21) North of Range Seven (7) East I. M.; Fraction of Section Thirty-four (34), Township Twenty-two (22) North of Range Seven (7) East I. M.

Surplus lands allotted to Wah-shah-she-ma-tsa-he, deceased Osage allottee No. 32:

The Northeast Quarter of the Northeast quarter and the Southwest Quarter of the Northeast Quarter and the Southeast Quarter of the Northeast Quarter of Section Nineteen (19), Township Twenty-eight (28) North of Range Seven (7), East I. M.; The Northwest Quarter of the Northwest Quarter and the Southwest Quarter of the Northwest Quarter of Section Twenty (20), Township Twenty-eight (28) North of Range Seven (7), East I. M.; Lots Three (3) and Four (4) and the Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section Three (3), Township Twenty-one (21) North of Range Seven (7) East I. M.; the North Half of the Northwest Quarter of Section Ten (10), Township Twenty-one (21) North of Range Seven (7) East I. M.; The Southwest Quarter of the Southwest Quarter, the North Half of the Southeast Quarter
35 of the Southeast Quarter of the Northeast Quarter, the Northeast Quarter of the Southeast Quarter of the Northeast Quarter, and the South Half of the Northwest Quarter of the Southeast Quarter of the Northeast Quarter of Section Thirty-four (34), Township Twenty-two (22) North of

Range Seven (7) East I. M. Homestead land allotted to Arthur Rogers, deceased Osage Allottee No. 1810:

The East Half of the Northeast Quarter of Section Seven (7), Township Twenty-three (23) North of Range Four (4) East I. M.; The West Half of the Southwest Quarter of Section Eight (8), Township Twenty-three (23) North of Range Four (4) East I. M.)

and from interfering in any manner with said lands, or any part thereof; and from making any record showing the sales or the offer of sale of any of said lands; and from issuing any tax sale certificate, or other certificate or deed, touching or affecting any of said lands; and from in any manner hindering or obstructing plaintiff, its agents, officers, servants or employees, or any or either of them, in the performance of its duties as guardian and trustee over said Indians and lands; and from in any manner encumbering the right, title or claim to said lands.

Service of this order is directed to be made by copy, certified by the Clerk of this Court.

September 28, 1917.

JOHN H. COTTERAL, Judge.

Endorsed: Filed in the District Court on Sept. 28, 1917.

United States of America,
Western District of Oklahoma—ss.

I, Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the within and foregoing to be a full, true, correct and complete copy of original Order to show cause in said case as the same appears of record and on file in my office.

Witness my hand and the seal of said Court at my office in the City of Enid in said District, this 28th day of September, A. D. 1917.

(Seal) ARNOLD C. DOLDE, Clerk,
By Frank T. McCoy, Deputy.

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36 (Proof of Service of Order to show cause.)

A. T. Woodward, of lawful age, being duly sworn according to law, deposes and says that on Saturday the 29th day of September, he personally filed a certified copy of the foregoing order to show cause upon John A. Gleeson, Chair-

man of the Board of County Commissioners, Osage County, Okla, T. M. Broaddus, County Clerk, Osage County, and E. J. McCurdy County Treasurer of Osage county, Okla and also served upon the said E. J. McCurdy, a copy of the Bill of Complaint filed in this case.

A. T. WOODWARD.

Sworn to and subscribed before me this 1st day of October 1917.

(Seal) GEO. N. WISE,
Notary Public.

My commission expires May 10/1919.

Endorsed: Copy of Order to show Cause with proof of Service, Filed in the U. S. District Court, on Oct. 11, 1917.

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37 (Amendment to Bill of Complaint.)

Filed in the U. S. District Court, October 3, 1917.

Now comes the plaintiff, in the above entitled cause, with leave of Court, and in amendment to its bill of complaint therein, says:

1. That plaintiff, by its proper representatives, has caused an investigation to be made of the official records of Osage County, by and with the assistance of the officers of said County having custody of the tax records thereof, for the purpose of ascertaining whether the Township assessors who proposed the purported assessment rolls of real estate for the respective townships of Osage County, Oklahoma, for the years 1910 and 1911, did, in fact, prepare and file rolls of assessments as and in the manner provided by law; that no such rolls for said years 1910 and 1911 could be located or identified, and that plaintiff was informed and believes that no such rolls are, or ever have, been among the archives or records of said County, and plaintiff further states that it is informed and believes that the assessors for said townships did not prepare or
38 file with the proper officer or officers of said County any proper and legal schedule or schedules of assessment of real property for either of said years; and that plaintiff further says that it also caused an investigation to be made in like manner of the official records of said County to ascertain whether any bond was filed by the trustees of the several township, for the years 1910 and 1911, for the faithful performance of their duties as assessors, and also whether any oath was executed and filed by said trustees qualifying them to act as assessors of real estate in said County for the years 1910 and 1911, and that no record could be found in said

County records of the existence or execution of any such bond or oath of office, and plaintiff is informed and believes that no such bond or oath was ever made a matter of record therein. Plaintiff is also informed and believes that no oath of office was filed, or is on file, in the office of the County Clerk for Osage County, executed by the County Assessor who made the purported assessments of Osage Indian and other lands in Osage County for the term of two years, beginning with January 1, 1912.

2. That there are on file in the office of the Assessor for said County certain rolls or schedules purporting to be the rolls of assessments of real and personal property for the years 1910 and 1911, but that plaintiff is informed and believes that said rolls or schedules were not made by the township trustees charged by law with the duty of making the assessment rolls for said years 1910 and 1911. And in connection with the supposed rolls and schedules which are on file in the office of the County Assessor for said County, plaintiff states it to be true that the several tracts scheduled
39 therein are not listed separately by legal subdivisions, but that several legal subdivisions are listed and valued collectively, and that no separate showing is made upon said supposed schedules of the valuation per acre placed upon each legal subdivision, and that the returns so made were improperly and erroneously made and do not constitute lawful rolls or schedules of appraisement, and, furthermore, that the printed forms which are attached in some cases to the inside surface of the last covers of the books containing the said purported rolls have not been duly executed and sworn to by the persons whose names are signed thereon as Assessors of said townships, and that in other cases there is no statement of any kind whatever attached to said books to show by whom or under whose authority the supposed assessment schedules therein contained were made.

That the purported assessments of Osage Indian lands, for the years 1910 and 1911, in Osage County, Oklahoma, were made in pretended compliance with an Act of the Legislature of Oklahoma, purporting to have been approved March 11, 1903 (Chapter 34, Session Laws of 1903); that plaintiff is informed and believes the said supposed act was never signed by either of the presiding officers of the Legislature of Oklahoma or by the Governor thereof, and that the so-called Act never became a law. And in connection with said Act, plaintiff is informed and believes that the township trustees who pretended as assessors to value the lands of Osage Indians for

the years 1910 and 1911, did not comply with the terms thereof in the material respect hereinbefore mentioned.

40 3. That no notice was given to the allottees of [of] Osage Indian lands, or their heirs, included in this proceeding, for the years 1912, 1913, and 1914, of the amount of their tax assessments, or of the date when their taxes fell due, or of the date when their taxes became delinquent; that such notice was required by the Act of the Oklahoma Legislature approved March 22, 1911 (Chapter 120, Session Laws 1910-1911); that the Supreme Court of Oklahoma rendered a decision in the case entitled Trimmer vs. Rennie, et al, (141 Pac. 784) that the notice required to be given by said Act was essential and necessary to set the penalty running, as therein provided; and that the time for the payment of all delinquent taxes due on real estate in the State of Oklahoma was extended to June 1, 1915, by the Act of the Oklahoma Legislature, approved Feby. 3, 1915 (Session Laws 1915, page 9).

4. That plaintiff is informed and believes that the township trustees or other persons who made the pretended and supposed appraisements for the year 1910 of Osage Indian lands in Oklahoma adopted, under the instructions of the County Board of Commissioners of said County, a rule or standard of appraisement that was a mistaken, erroneous, and illegal rule, in that pursuant to such instructions they intentionally omitted and failed to make any deduction, from the amount of their appraisements of the several tracts in question, by reason of the fact that all minerals in and under said land are reserved by law until the year 1931, to the Osage Tribe of Indians, and that there is by reason of such reservations of the said minerals and by reason of the mining leases covering said lands, or about to be placed thereon, great probability of serious damage being done at any time to the
41 surface of said lands by the sinking of oil wells thereon, the opening of mines, and the erection thereon of derricks, tanks, and other apparatus used in mining operations, and by the pollution of the waters thereon, whereby the prices which said lands will bring at voluntary sale are materially borne down and lessened, and that such reduction frequently amounts to 25% to 50% of the price such lands would otherwise command and bring.

5. That the statements made herein be considered in connection with the original bill in this proceeding, as amendatory and supplemental thereto, and that plaintiff be granted the relief prayed for in said bill and such other and further relief as the nature and circumstances in the case may require.

JNO. A. FAIN,
United States Attorney.

United States of America,
Western District of Oklahoma—ss.

Joseph W. Howell, being first duly sworn, on oath states that he has read the foregoing amendment to bill of complaint and knows the contents thereof, and that the allegations therein contained are true, except such allegations as are upon information and belief, and as to those he verily believes them to be true.

JOSEPH W. HOWELL.

Subscribed and sworn to before me this 3rd day of October, A. D. 1917.

(Seal)

FRANK T. McCOY,
Deputy Clerk, U. S. Dist. Court,
Western District of Oklahoma.

Service of the above amendment to bill of complaint by copy is hereby acknowledged and accepted this 3rd day of October, A. D. 1917.

CORBETT CORNETT,
Attorney for Defendants.

42 Endorsed: Filed in the District Court on Oct. 3, 1917.

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43 (Amendment to Bill of Complaint.)

Filed in the U. S. District Court, October 4, 1917.

Now comes the plaintiff in the above entitled cause and by leave of court, in amendment to its bill of complaint therein, says that one Arthur Rogers, whose name appears on the 5th subdivision of the schedule marked "A", which was attached to said bill and made a part thereof, was in his life time an allottee of Osage Indian Lands; that he was duly found and declared to be a competent Indian; that a Certificate of Competency was issued to him in the form and manner provided by law, on the 19th day of November, 1909; that plaintiff is informed and believes that said allottee departed this life on the 24th day of March, 1913, and that the lands allotted as the homestead of said Rogers were assessed and listed for purpose of taxation as set forth in said bill of complaint and the amendment thereto, heretofore filed, for the year (or years) 1914, 1915 and 1916.

JNO. A. FAIN
United States Attorney.

44 United States of America,
Western District of Oklahoma—ss.

J. George Wright, being first duly sworn, on oath states that he has read the foregoing amendment to bill of complaint and knows the contents thereof, and that the allegations therein contained are true, except such allegations as are upon information and belief, and as to those he verily believes them to be true.

J. GEO. WRIGHT.

Subscribed and sworn to before me this 4th day of October, A. D. 1917.

ARNOLD C. DOLDE,
Clerk, U. S. District Court, Western District of Oklahoma.

Service of the above and foregoing amendment to bill of complaint is hereby acknowledged and accepted this 4th day of October, 1917.

PRESTON A. SHINN,
Attorney for Defendants.

Endorsed: Filed in the District Court on Oct. 4, 1917.

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45 (Motion of Defendants to dismiss Bill of Complaint.)

Comes now the defendants, and each of them, and pray the Court to Dismiss the Bill of Complaint filed herein for the following reasons:

1. There is no proper party plaintiff.

2. The said Bill of Complaint shows on its face that the Court is without Jurisdiction thereof.

3. There is no Federal Question involved, and therefore the Court is without Jurisdiction.

4. The said Bill of Complaint does not state a cause in Equity.

5 The plaintiff, and each and all of the Indians upon whose behalf this suit is brought, have a plain, speedy, adequate and complete remedy at Law.

CORBETT CORNETT
County Attorney.

PRESTON A. SHINN
Counsel for each and all of Defendants.

Endorsed: Filed in the District Court on Oct. 4, 1917.

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46 (Decree October 4, 1917.)

In the District Court of the United States for the Western Distirct of Oklahoma.

United States of America, Plaintiff,
No. 243. vs. In Equity.
Board of County Commissioners, of Osage County, Oklahoma, T. M. Broaddus, County Clerk, and E. J. McCurdy, County Treasurer.

This cause comes on for hearing this day upon the motion of the defendants to dismiss the bill of the plaintiff, as amended, and thereupon the said motion is argued by counsel and submitted, and upon consideration thereof, the court sustains said motion, on the ground that the lands involved were by Act of Congress, approved June 28, 1906, declared subject to taxation, and that the plaintiff has no interest in said lands, and has no duty or authority to contest the taxes thereon, or the sale of said lands for unpaid taxes, and is therefore not entitled to relief.

And thereupon, the plaintiff elects to stand on its bill herein, as amended; and the court being fully advised, it is

Ordered, adjudged and decreed that the said bill be and it is hereby dismissed, and that the plaintiff be and it is denied relief herein.

To which decree of the Court and every part thereof, the plaintiff excepts.

Dated October 4, 1917.

JOHN H. COTTERAL,
District Judge.

Endorsed: Filed in the District Court on Oct. 4, 1917.

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47 (Petition for Appeal and Order allowing same.)

The above named plaintiff, conceiving itself aggrieved by the decree made and entered on the 4th day of October, 1917, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order and decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

JOHN A. FAIN,
United States Attorney,
Attorney for Plaintiff.

The foregoing prayer for an appeal is granted and appeal allowed this 11th day of October, 1917.

JOHN H. COTTERAL,
Judge of the United States District Court for the Western District of Oklahoma.

48 Endorsed: Filed in the District Court on Oct. 11, 1917.

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49 (Assignment of Errors.)

And now on this 11th day of October, 1917, comes the plaintiff, by its solicitor, John A. Fain, United States [Attorney] for the Western District of Oklahoma, and avers that the decree made and entered in the above entitled cause, on the 4th day of October, 1917, against the plaintiff and in favor of the defendants, is erroneous and against the just rights of this plaintiff, for the following reasons:

First. The court erred in sustaining the motion of defendants to dismiss plaintiff's Bill in Equity, and in holding and decreeing that the plaintiff has no interest in the lands included, identified and designated in said bill;

Second. The court erred in rendering a final decree in favor of defendants, and against the plaintiffs, and in holding and decreeing that plaintiff has no duty to contest the taxes assessed on said lands, or the sale thereof for unpaid taxes;

Third. The court erred in holding and decreeing that the defendant has no authority to contest the taxes assessed on said lands, or the sale thereof for unpaid taxes;

50 Fourth. The Court erred in not holding that the said lands are exempt from sale to enforce collection of taxes assessed thereon, as alleged and set forth in said bill.

Fifth. The Court erred in not holding that the Indian and their heirs represented by plaintiff are exempt from the payment of penalties for unpaid taxes, and that the lands of said Indians and their heirs are exempt from sale to enforce the collection of said penalties, as alleged and set forth in said bill.

Sixth. The Court erred in not holding that the homesteads of deceased Indians are exempt from taxation and from sale for unpaid taxes and penalties, as alleged and set forth in said bill.

Seventh. The Court erred in not holding that the assessments made by the Township and County officers of Osage County, Oklahoma, for purposes of taxation were made in an unlawful and improper manner and without authority of law, as in said bill alleged and set forth.

Eighth. The Court erred in not holding that the persons who made the said assessments failed to qualify for the positions and duties of assessors by neglecting to execute and file bond and oath, in accordance with law, as in said bill alleged and set forth.

Ninth. That the Court erred in not holding that the persons who made said assessments failed and neglected to prepare and file proper lists or schedules showing the valuations. by legal subdivisions, placed by them on said lands and that they failed and neglected to verify under oath, such lists or schedules, as alleged and set forth in said bill.

51 Tenth. That the Court erred in not holding that the purported assessments made by said persons for purposes of taxation, were made in an arbitrary, capricious and discriminatory manner, without a proper and actual inspection or examination of the said lands and without the exercise of judgment as to the value thereof, and that such assessments constitute in law and in fact no assessments at all, as set forth and alleged in said bill.

Eleventh. That the Court erred in not holding that the valuations of said lands, placed thereon by said persons for purposes of taxation, were grossly excessive and exorbitant

and amounted to a constructive fraud upon the taxpayers, the said Indians and their heirs, as in said bill alleged and set forth.

Twelfth. That the Court erred in not holding that the purported assessments of said lands and the proposed sale thereof to enforce collection of taxes and penalties are contrary to and in violation of the legal rights of said Indians and their heirs guaranteed by the Constitution of the United States, and by the Constitution of the State of Oklahoma, as alleged and set forth in said bill.

Thirteenth. The Court erred in not perpetually enjoining the defendants from selling or offering to sell any of said lands for unpaid taxes and penalties claimed to be due thereon.

Fourteenth. The Court erred in not decreeing that the appraisement made by the Federal appraisers under the Act of Congress, approved March 2, 1917, be accepted and made the basis for the adjustment and settlement of all claims and controversies resulting from the assessment of said lands for purposes of taxation prior to July 1, 1917, or in lieu thereof that some other standard of adjustment be accepted and made the basis for the settlement of such claims.

52 Fifteenth. The decree is not supported by, and is contrary to the evidence.

Sixteenth. The decree is contrary to law.

Seventeenth. The decree is contrary to equity.

Wherefore, the said plaintiff prays the said order and decree be reversed and that the District Court of the United States for the Western District of Oklahoma be directed to enter a decree in favor of plaintiff and against the defendants and that the defendants be perpetually enjoined from selling or attempting to sell any of said lands to enforce collection of taxes or tax penalties and, furthermore, that said Court be directed to enter a decree directing defendants to accept the Federal appraisement made under authority of the Act of Congress, approved March 2, 1917, or some other just and equitable standard of adjustment, as the basis for the adjustment and settlement of all claims made by or on behalf of said Osage Indians and their heirs, respecting any assessment made for purposes of taxation prior to July 1, 1917, and that the plaintiff have any and all other relief which to

the Court may seem equitable, just and proper in the premises.

JOHN A. FAIN,
United States Attorney.

Endorsed: Filed in the District Court on October 11, 1917.

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53 Election and Designation of Plaintiff as to Transcript on Appeal.

In the above entitled cause, the appellant gives notice of its election to take and file the transcript of the record herein in the Appellate Court, to be printed under the supervision of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, and under its rule.

And the said appellant hereby designates the following to be included in said transcript:

1. Plaintiff's Bill.
2. Order to show cause, with return thereon.
3. Plaintiff's first amendment to said bill.
4. Plaintiff's second amendment to said bill.
5. Defendants' third and last motion to dismiss.
6. Final decree.
7. Petition for Appeal, with approval of Court thereon.
8. Assignment of Errors.
9. Citation.
10. Election and designation of plaintiff as to transcript on appeal.

54 11. Praecipe on Appeal.

JOHN A. FAIN,
United States Attorney,
Attorney for above named plaintiff, appellant.

We hereby accept service of the above notice this 12th day of October, 1917, and acknowledge receipt of a copy thereof.

PRESTON A. SHINN,
Attorney for Appellees.

Endorsed: Filed in the District Court on Oct. 24, 1917.

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55 (Praecipe for Transcript.)

To the Clerk of said Court:

You will please include in the transcript on appeal the following:

1. Plaintiff's bill.
2. Order to show cause, with return thereon.
3. Plaintiff's first amendment to said bill.
4. Plaintiff's second amendment to said bill.
5. Defendants' third and last motion to dismiss.
6. Final decree.
7. Petition for Appeal, with approval of Court thereon.
8. Assignment of Errors.
9. Citation.
10. Election and designation of plaintiff as to transcript on appeal.
11. Praecipe on Appeal.

JOHN A. FAIN,
United States Attorney, Attorney for above named plaintiff, Appellant.

56 Endorsed: Filed in the District Court on Oct. 11, 1917.

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57 Clerk's Certificate to Transcript.

United States of America,
Western District of Oklahoma—ss.

I, Arnold C. Dolde, Clerk of the District Court of the United States for the Western District of Oklahoma, do hereby certify the above and foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court, in case Number 243, In Equity, wherein The United States of America, is plaintiff, and The Board of County Commissioners

of Osage County, Oklahoma, T. M. Broaddus, County Clerk of Osage County, Oklahoma, and E. J. McCurdy, County Treasurer of Osage County, Oklahoma, are defendants, as full, true and complete as the said transcript purports to contain, and as called for by the praecipe for transcript and election and designation of the record above set forth.

I further certify that the original citation is hereto attached and returned herewith.

Seal
U. S. Dist. Court,
West. Dist. of Okla.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at office in the City of Guthrie in said District, this 31st day of October, A. D., 1917.

ARNOLD C. DOLDE, Clerk.
By M. V. Haws, Deputy Clerk.

Filed Nov 2 1917 E. E. Koch, Clerk.

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44 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Mr. John A. Fain, United States attorney, as counsel for appellant.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5052.

UNITED STATES OF AMERICA, APPELLANT,

vs.

BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLA.

The clerk will enter my appearance as counsel for the appellant.
JOHN A. FAIN,
United States Attorney, Western District of Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 12, 1917.

(Appearance of Mr. Joseph W. Howell, as Counsel for Appellant.)

The clerk will enter my appearance as counsel for the appellant.
JOSEPH W. HOWELL,
Room 3108 Interior Dept. Bldg., Washington, D. C.

45 (Endorsed:) Filed in U. S. Circuit Court of Appeals Nov. 21, 1917.

(Appearance of counsel for appellees.)

The clerk will enter my appearance as counsel for the appellees.

PRESTON A. SHINN.

(Endorsed:) Filed in U. S. Circuit Court of Appeals Feb. 2, 1918.

(Order of submission.)

SEPTEMBER TERM, 1918,
Tuesday, September 3, 1918.

This cause having been called for hearing in its regular order, argument was commenced by Mr. John A. Fain, United States attorney, for the appellant, and concluded by Mr. Preston A. Shinn for the appellees.

Thereupon, this cause was submitted to the court on the transcript of the record for said District Court and the briefs of counsel filed herein.

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46 (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

No. 5052.—September Term, A. D. 1918.

UNITED STATES OF AMERICA, APPELLANT, *vs.* BOARD OF COUNTY COMMISSIONERS OF Osage County, Oklahoma et al., appellees.	Appeal from the District Court of the United States for the Western District of Oklahoma.

Mr. John A. Fain, United States attorney (Mr. Joseph W. Howell was with him on the brief), for appellant.

Mr. Preston A. Shinn (Mr. Corbett Cornett was with him on the brief) for appellees.

Before SANBORN, CARLAND, and STONE, Circuit Judges.

CARLAND, *Circuit Judge*, delivered the opinion of the court.

The United States as guardian of certain Osage Indian allottees brought this suit against appellees to enjoin them from selling certain lands described in the complaint for delinquent State and county taxes assessed and levied for the years 1910–11–12–13–14–15–16–17. The taxes so levied were alleged to be illegal for the reason that the assessments upon which they were levied were arbitrary, grossly excessive, discriminatory, and unfair, also that the lands of the Osages

were systematically overvalued and the lands of other taxpayers systematically undervalued. The appellees filed a motion to dismiss on the following grounds:

"1. There is no proper party plaintiff.

"2. The said bill of complaint shows on its face that the court is without jurisdiction thereof.

47 "3. There is no Federal question involved, and therefore the court is without jurisdiction.

"4. The said bill of complaint does not state a cause in equity.

"5. The plaintiff, and each and all of the Indians upon whose behalf this suit is brought, have a plain, speedy, adequate, and complete remedy at law."

The court sustained the motion and dismissed the complaint upon the ground that the lands involved were by act of Congress approved June 28, 1906, declared subject to taxation and the plaintiff had no interest in said lands or authority to contest the taxes thereon or the sale of said lands for unpaid taxes. In order to sustain the judgment of dismissal appellees may rely here upon any of the grounds made in their motion to dismiss. Dowd *v.* United Mine Workers of America et al., 235 Fed., 1.

The fifth ground above stated is insisted upon here to sustain the judgment of dismissal. If this ground is well taken we have no authority to consider the other points urged. It is our opinion that the United States or the Indians whom they represent had a plain, adequate, and complete remedy at law under the statutes of Oklahoma. A law of Oklahoma, effective March 10, 1909, Compiled Laws Oklahoma, 1909, p. 1526, provided:

"Said board of equalization shall meet on the third Monday of April of said year to examine the assessment rolls of such township, cities, or towns, and to hear all complaints of persons who shall feel aggrieved by their assessment, and to correct, equalize, and adjust the assessments therein by increasing or decreasing individual assessments or the aggregate assessments of such city, town, village, or township, and if necessary they may require a reassessment of any or all the property therein, such correction, equalization, adjustment, or reassessment, shall be for the purpose of causing the same to be assessed at its fair cash value as herein defined and decision of said board shall be final as to individual assessment unless an appeal is taken to the board of county commissioners on or before the first Monday in June next following."

July 17, 1910, said law was amended so as to provide for appeals from the board of county commissioners to the county court
48 of the county in which the land was located. Said law also provided that the board of equalization should hold a session on the first Monday of June each year—

"For the purpose of equalizing, correcting, and adjusting the assessment rolls in their county between the different townships by increasing or decreasing the aggregate assessed value of the property, or any class thereof, in any or all of them to conform to the

fair cash value thereof, as herein defined; provided, that the county board of equalization may for the purpose of having the assessment of any city, town, village, or township corrected, order a reassessment of any or all the property therein. (Compiled Laws of 1909, page 1526, also Laws of 1910, section 7367.)"

Said law further provided as follows:

"The proceedings before the board of equalization and appeals therefrom shall be the sole method by which assessments or equalizations shall be corrected or taxes abated. Equitable remedies shall be resorted to only where the aggrieved party has no taxable property within the tax district of which complaint is made."

Thereafter a law effective June 10, 1911, provided as follows:

"The county equalization board shall meet at the county seat, and shall hold a session commencing on the first Monday in June of each year for the purpose of equalizing taxes over the county, notice of which shall be given at least ten days prior thereto in some newspaper of general circulation in the county. * * * Any person who may think himself aggrieved by the assessment of his property shall have the right to appear before the board for the purpose of having the assessment of his property adjusted. Complaints against the assessment shall be determined by the board in a summary manner, and the assessor's lists shall be corrected and adjusted accordingly; provided, that an appeal may be taken from the final action of said board as provided by law. Said board shall have the authority to raise, lower, and adjust individual assessments, fixing the same at the fair cash value of the property; to add omitted property and to cancel assessments of property not taxable. * * * (Session Laws of 1910–11, p. 334, sec. 11, effective June 10, 1911).

49 "The board of county commissioners of each county may hear and determine allegations of erroneous assessments or mistakes or differences in the description of value of land or other property, at any session of said board, before the taxes shall have been paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the meeting of the county board of equalization, for the purpose of correcting such error, difference, or mistake, and wherein a lot of land or portion thereof, or any other property has been assessed to any one person, firm, or corporation who or which did not own the same, or property exempt from taxation has been assessed, or which has been doubly or erroneously assessed, the board of county commissioners shall have power, and it shall be their duty to correct all such assessments, and if any such taxes, so erroneously assessed shall have been paid, the same shall be a valid charge against the county and shall be refunded by the board of county commissioners. * * *" (Sec. 14 of the act, next above mentioned.)

A law effective February 3, 1915, provided as follows:

"Any taxpayer feeling aggrieved at the assessment as made by the assessor, or the equalization as made by the county board of equalization. may, during the session of said board, or, if the same

is closed, within ten days after the first Monday in June, file with said assessor as secretary of said board, a written complaint specifying his grievance and the pertinent facts in relation thereto in ordinary and concise language and without repetition, in such manner as to enable a person of common understanding to know what is intended; and said board shall be authorized and empowered to take evidence pertinent to said complaint and for that purpose is authorized to compel the attendance of witnesses and the production of books and papers by subpœna and to correct or adjust the same, as may seem just. And the stenographer of the county court is directed, at the request of the board or taxpayer, to take shorthand notes of such testimony, and to transcribe such complaint and evidence, and a full transcript of the action of the board thereon, and file the same with his certificate as to its accuracy in the district court, the filing of which transcript shall complete said appeal, which shall, in due course, be examined and reviewed by
50 said court and affirmed, modified, or annulled as justice shall demand," etc. (Session Laws 1915, sec. 2, page 147.) * * *

"This act shall be construed to give remedies and rights in addition to those of appeal heretofore given by statute, but the remedies of resort to the boards and appeal therefrom shall be the sole remedies for the correction of assessments or equalization" (Session Laws, 1915, sec. 5).

"In all cases where the illegality of the tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against the officer for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him for a period of thirty days, and if within such time summons shall be served upon such officer in a suit for recovery of such taxes the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the court having jurisdiction thereof, and they shall have precedence therein," etc. (Session Laws, 1915, sec. 7, page 149).

The Supreme Court of the State of Oklahoma, in Board of Commissioners of Canadian County v. Tinklepaugh, 152 Pac., 1119, decided that the law of 1910, section 7370, provided a speedy and adequate remedy for inequality or injustice in assessments or equalization and provided the sole method by which assessments or equalizations could be corrected. See also Board of Commissioners of Garfield County v. Field, 162 Pac., 733.

We are clearly of the opinion that the United States and the individual Indians whose property was taxed had during the whole eight years that the taxes were imposed a plain, speedy, and adequate remedy at law. Section 267 of the Judicial Code, formerly section 723 of the Revised Statutes of the United States, prohibits us from

taking jurisdiction in equity where a plain, adequate and complete remedy may be had at law. Such remedies as are provided by
51 the statutes of Oklahoma above quoted have been held plain, adequate, and complete. Indiana Manufacturing Co. v. Koehne, 188 U. S., 681; Singer Sewing Machine Co. v. Benedict, 229 U. S., 481; Stanley v. Supervisors of Albany, 122 U. S., 535; McDougal v. Mudge et al., 233 Fed., 235; McLaughlin et al. v. St. Louis Southwestern Ry., 232 Fed., 579; Smith v. Douglas County et al., 242 Fed., 897.

The United States have no more rights so far as equitable jurisdiction is concerned than private citizens. United States v. Stimson, 197 U. S. 200, 204, 205; United States v. Detroit Timber and Lumber Co., 131 Fed., 668, 677, 67 C. C. A., 1, 10; United States v. Debell, 227 Fed., 775, 779, 142 C. C. A., 284; United States v. Chandler-Dunbar Water Power Co., 152 Fed., 25, 81 C. C. A., 221; United States v. Midway Northern Oil Co., 232 Fed., 619, 631; State of Iowa v. Carr, 191 Fed., 257, 266, 112 C. C. A., 477, and authorities there cited.

The judgment of the court below is therefore affirmed upon the ground that there was an adequate remedy at law during the years mentioned to correct the errors of which complaint is made.

Filed November 21, 1918.

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52 (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1918.

MONDAY, *December 2, 1918.*

UNITED STATES OF AMERICA, APPELLANT, *vs.* BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, Oklahoma, to wit: John A. Gleeson, James Perrier, and C. A. Cork, and T. M. Broaddus, county clerk of said Osage County, and E. J. McCurdy, county treasurer of said county.	No. 5052.

Appeal from the District Court of the United States for the Western District of Oklahoma.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Oklahoma, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed, without costs to either

party in this court, upon the ground that there was an adequate remedy at law during the years the taxes were assessed and levied to correct the errors of which complaint is made.

DECEMBER 2, 1918.

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53 (Petition for appeal to Supreme Court, U. S.)

Comes now the United States of America, by John A. Fain, United States attorney for the Western District of Oklahoma, appellant in the above-entitled cause, and shows that on or about the twenty-first day of November, 1918, this court entered a judgment in favor of the appellees and against the appellant, affirming the judgment of the United States District Court for the Western District of Oklahoma, in which judgment certain errors were committed to the prejudice of the appellant, and which will appear more in detail in the assignment of errors filed with this petition.

Wherefore, the petitioner prays the allowance of an appeal for removing this case to the Supreme Court of the United States for the correction of the errors complained of; that the transcript of record, proceedings, and papers in the cause, duly authenticated, may be sent to the Supreme Court of the United States; and that the mandate of this court be stayed until further order.

JOHN A. FAIN,
United States Attorney, Attorney for the Appellant.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 1, 1919.

(Assignment of errors on appeal to Supreme Court, U. S.)

Comes now the appellant, by its attorney, and says that in the record and proceedings of the Circuit Court of Appeals for the Eighth Circuit in the above-entitled cause and in the rendition of final judgment therein, manifest error has intervened to the
54 prejudice of said appellant in this, to wit:

1. The court erred in affirming the judgment of the United States District Court for the Western District of Oklahoma in favor of the appellees and against the appellant.

2. The court erred in not reversing the decree of the United States District Court for the Western District of Oklahoma.

3. The court erred in holding that the appellant had a plain, adequate, and complete remedy at law.

4. The court erred in not holding that the appellant had no plain, adequate, and complete remedy at law.

5. The court erred in holding that the United States District Court for the Western District of Oklahoma, sitting in equity, was without jurisdiction to enjoin the sale of the allotted lands of Osage Indians for taxes levied upon arbitrary, grossly excessive, discrimi-

natory, and unfair assessments upon lands systematically and intentionally overvalued.

6. The court erred in not holding that the United States District Court for the Western District of Oklahoma, sitting in equity, had jurisdiction to enjoin the sale of the allotted lands of Osage Indians for taxes levied upon arbitrary, grossly excessive, discriminatory, and unfair assessments upon lands systematically and intentionally overvalued.

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JOHN A. FAIN,
United States Attorney, Attorney for the Appellant.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 1, 1919.

(Order allowing appeal to Supreme Court, U. S.)

On petition of appellant, it is ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States in this cause, as prayed.

Dated St. Louis, Missouri, February 1, 1919.

WALTER H. SANBORN,
Senior United States Circuit Judge, Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Feb. 1, 1919.

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56 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the board of county commissioners of Osage County, Oklahoma, to wit: John A. Gleeson, James Perrier, and C. A. Cook, and to T. M. Broaddus, county clerk of said Osage County, and E. J. McCurdy, county treasurer of said county, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Walter H. Sanborn, Senior United States Circuit Judge in and for the eighth circuit, this first day of February, A. D. 1919.

WALTER H. SANBORN,
Senior United States Circuit Judge
for the Eighth Circuit.

UNITED STATES OF AMERICA, *ss:*

Complete and legal service of the within citation on appeal, together with præcipe, by delivery to me at Pawhuska, Oklahoma, on this day, of a true, full, and perfect copy thereof, is hereby accepted.

Dated at Pawhuska, Oklahoma, this the fourth day of February, A. D. 1919.

CORBETT COMETT,
PRESTON A. SHINN,
Attorney for Appellees.
Board of County Commissioners of Osage County, to wit: John A. Gleason, James Parrier, C. A. Cook, and T. M. Broaddus, County Clerk of said Osage County, and E. J. McCurdy, County Treasurer of said county.

57 (Clerk's certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Oklahoma, as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its clerk, and full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles, and endorsements omitted in pursuance of the rules of the Supreme Court of the United States in a certain cause in said Circuit Court of Appeals wherein the United States of America was appellant, and the Board of County Commissioners of Osage County, Oklahoma, et al., were appellees, No. 5052, as full, true, and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this twentieth day of February, A. D. 1919.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsement on cover:) File No. 26,967. U. S. Circuit Court Appeals, 8th Circuit. Term No. 881. The United States of America, appellant, vs. The Board of County Commissioners of Osage County, Oklahoma, et al. Filed February 25th, 1919. File No. 26967.

In the Supreme Court of the United States

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, Appellant,
v.
THE BOARD OF COUNTY COMMISSIONERS of Osage County, Oklahoma, et al.
No. 881.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General and respectfully moves the court to advance the above-entitled cause for hearing on some day convenient to the court during the present term.

This suit was brought by the United States to enjoin the Board of County Commissioners of Osage County, Oklahoma, from selling certain surplus lands of noncompetent Osage Indians for taxes levied for the years 1910 to 1917, inclusive, on the ground that the taxes were wrongfully and unlawfully levied, the assessments arbitrary, grossly excessive, and intentionally and systematically discriminatory and unfair, and that the lands were so grossly and in-

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tentionally overvalued for taxation as to amount to a constructive fraud in violation of the State and Federal Constitutions.

The case involves the lands of about one thousand noncompetent Osage Indians, some of them minors, and some of whose lands have been sold for taxes since the institution of this suit.

The District Court sustained a motion to dismiss the bill on the ground that the United States had no capacity to sue and no interest in the subject-matter of the suit. The Circuit Court of Appeals affirmed the decision of the District Court, basing its decision on the entirely different ground that the United States had a plain, adequate and complete remedy at law under the statutes of Oklahoma.

Under the statutes of Oklahoma the time for the redemption of such of these lands as have been sold for taxes expires in October or November, 1919. If this case should await a hearing in its regular order, it is apparent that the time for redemption will expire prior to its decision by this court, and in the event this court should affirm the decision of the courts below the Secretary of the Interior will have no opportunity to redeem these lands, and they will be lost to the Indians.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

MARCH, 1919.

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Argument—Continued.

CASES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLAHOMA, ET AL. } No. 881.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The appeal in this case is from a decree of the Circuit Court of Appeals for the Eighth Circuit affirming a decree of the District Court of the United States for the Western District of Oklahoma, dismissing the bill of complaint filed by the United States in its own behalf and as guardian of certain adult and minor noncompetent Osage Indians against the Board of County Commissioners, the County Treasurer, and other tax officials of Osage County, Oklahoma, to enjoin them from selling the surplus lands of such Indians for state and county taxes assessed and levied for the years 1910 to 1917, inclusive.

The case was heard upon the bill of complaint and exhibits therewith (R. 2), and motion to dismiss (R. 36). The bill alleges that under the Act of June 26, 1906, 34 Stat. 539, entitled "An Act for the Division of the Lands and Funds of the Osage Indians in Oklahoma, and for other purposes," the individual Osage Indians were allotted homestead and surplus lands in the Osage Indian Reservation, subject to the conditions, restrictions, and limitations provided in said Act (Par. 4), certain tracts or selections alleged to be typical being identified and designated by the schedules marked "A" and "B" (Pars. 6, 17); that all of said lands are subject to the general supervision and control of the plaintiff under its laws and particularly under the said Osage Allotment Act (Par. 8); that the tax officials of Osage County have assessed the lands of these Indians for taxes for the years 1910 to 1917, inclusive, entered said assessments upon the tax rolls of said county, levied the taxes so assessed against the respective tracts, and caused the tax rolls to be delivered to the County Treasurer with authority to collect the taxes so assessed and levied; that none of the taxes so levied have been paid and all have, with the exception of the 1917 taxes, become delinquent, and the County Treasurer intends to sell and will advertise and sell all of said lands unless restrained from so doing, and that the sale thereof will impose upon the plaintiff a multiplicity of suits (Par. 9); that the taxes so assessed, levied, and extended have been

wrongfully and unlawfully levied; that in the year 1910 no demand was made upon the owners of the lands involved for a schedule of their property, no notice was given of the amount of the taxes imposed nor of the time when the same became due or delinquent, as required by the law of Oklahoma; that all the persons whose allotments were so assessed without notice as required by law were noncompetent or restricted Indians, many of whom were in 1910, and are now, minors for whom the County Court of Osage County had no authority to appoint a guardian; that "the assessments for the year 1910 were also arbitrary, grossly excessive, discriminatory, and unfair, and were made in violation of the rights of the said Osage Indians, guaranteed by the Constitution of the United States and the Constitution of the State of Oklahoma" (Par. 11); that for the years subsequent to 1910 the assessments were made in like manner and under the same procedure as for that year, except that for the year 1911 the State Board of Equalization arbitrarily and systematically increased the assessments on Osage Indian lands to an amount approximately nearly double the original amount of such assessments without notice and in violation of the laws of Oklahoma (Pars. 12, 13, and 14); that the so-called assessments on these lands were made without examination of the land and without knowledge of the facts, were arbitrary and capricious, and

> that the said appraisers in making said appraisements discriminated against the lands

of the Osage Indians as a class and systematically overvalued the same and systematically undervalued other property in said County; that the said appraisers in making said appraisements intentionally proceeded in disregard of the true value of the land by adopting arbitrarily a minimum value of appraisement per acre as the basis of their assessments; that the assessments so made by said assessors were made in such an arbitrary and capricious manner as to amount to constructive fraud upon the taxpayers, and that the overvaluations made by said assessors were so grossly excessive as to justify the interference of a court of equity; that as a result of the failure of said assessors to proceed in a lawful and proper manner, the Osage Indians and their heirs herein involved will, if their said lands are sold to enforce collection of taxes, be deprived of rights guaranteed by the Constitution of the United States and the Constitution of the State of Oklahoma.

The bill further alleges that the Secretary of the Interior in 1916 attempted to secure an adjustment of the controversy relating to the payment of these taxes, but found no proper basis for adjustment existed, in that there had never been a correct and true appraisement of the lands allotted to these Indians, and thereupon recommended to Congress that appropriate legislation be provided to secure such appraisement; that as a result of this recommendation Congress passed an Act approved March 2, 1917, 39 Stat. 969, 983, which provided an appropriation

of $5,000 out of the money belonging to the Osage Indians for the purpose of an appraisement of these lands as a fair and reasonable basis for the adjustment and settlement of these taxes; that appraisers were appointed under this Act who had full and accurate knowledge of land values in Osage County, and the work of appraisal had proceeded to a point nearing completion in which appraisements were based upon actual inspection of the land and thorough consideration of all the material facts; that the valuations fixed by said appraisers were correct, representing the value of said lands as of the year 1917, a value materially greater than at any prior time since the allotment thereof to the Osage Indians (Par. 16); that the assessments for the taxation of the allotments of Franklin Hickman, a noncompetent Osage allottee and minor, and of E-kah-pah-she, a noncompetent Osage minor, are typical cases showing the assessments of these allotments for taxes and the appraisals thereof under the authority of the Act of Congress, and that in the case of the allottee Hickman the County Attorney for Osage County had signed a stipulation in the District Court of Osage County that the lands included in Hickman's allotment were assessed by the County Assessor at $20 per acre when the true value of such lands was $3 per acre, while in the case of E-kah-pah-she the valuation of the appraisers acting under the Act of March 2, 1917, shows that the said allotment was overvalued for taxation 119 per cent. Attached to the bill of complaint is a schedule marked "B" of thirty-six allot-

ments of noncompetent Osage Indians, showing the appraisements of said lands for taxation and the appraisements thereof made under the authority of the aforesaid Act of Congress, and the valuation of these allotments is alleged to be typical (Par. 17, R. 11, 17).

The bill also alleges an offer on the part of plaintiff to pay to the County Treasurer of Osage County, at such time and place as the Court may direct, such sums as may be lawfully due in full payment of taxes on their lands, in accordance with the lawful and just appraisement thereof, and to that end it is alleged that the Secretary of the Interior is willing to accept the appraisement made under the authority of the Act of March 2, 1917, as the basis of adjusting and paying these taxes (Par. 18, R. 12).

The motion to dismiss assigned the following grounds (R. 36):

1. There is no proper party plaintiff.

2. The said bill of complaint shows on its face that the court is without jurisdiction thereof.

3. There is no Federal question involved, and therefore the court is without jurisdiction.

4. The said bill of complaint does not state a cause in equity.

5. The plaintiff, and each and all of the Indians upon whose behalf this suit is brought, have a plain, speedy, adequate, and complete remedy at law.

The District Court dismissed the bill on the ground that "the plaintiff has no interest in said lands, and has no duty or authority to contest the taxes thereon,

or the sale of said lands for unpaid taxes, and is therefore not entitled to relief" (R. 37). The Circuit Court of Appeals, while reciting the ground of the action of the District Court without approval, affirmed the judgment "upon the ground that there was an adequate remedy at law during the years mentioned to correct the errors of which complaint is made" (R. 48). Opinions, District Court (R. 37); Circuit Court of Appeals, 254 Fed. 570 (R. 44).

To sustain the contention that the courts below erred in dismissing the bill of complaint, we present under the assignment of errors the following propositions:

PROPOSITIONS.

I.

The United States has capacity to maintain this suit, and the right to sue in its own courts.

II.

There is no plain, adequate, and complete remedy at law.

ARGUMENT.

I.

The United States has capacity to maintain this suit, and the right to sue in its own courts.

The surplus lands of noncompetent Osage Indians are taxable (*United States* v. *Board of County Commissioners*, 216 Fed. 883, *McCurdy* v. *United States*, 246 U. S. 263), but these lands are still restricted under the provisions of the Osage Allotment Act of June 28, 1906, 34 Stat. 539, which came under the consideration of this court in *Levindale Lead Co.* v.

Coleman, 241 U. S. 432, and were there fully reviewed. We deem it unnecessary, therefore, to set out these provisions herein. In holding that the restrictions therein provided do not apply to the lands of white men, nonmembers of the tribe, the court in that case, speaking through Mr. Justice Hughes, said (p. 437):

> The provisions of the Allotment Act must be construed in the light of the policy they were obviously intended to execute. It was a policy relating to the welfare of Indians,—wards of the United States. The establishment of restrictions against alienation "evinced the continuance, to this extent at least, of the guardianship which the United States had exercised from the beginning." *Heckman* v. *United States*, 224 U. S. 413, 436; *United States* v. *Kagama*, 118 U. S. 375, 384; *United States* v. *Rickert*, 188 U. S. 432, 437, 438; *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 316; *Williams* v. *Johnson*, 239 U. S. 414, 420.

and in concluding its opinion the court said (p. 440):

> We confine ourselves to the single point presented. There is no controversy whatever as to the authority of the Secretary of the Interior, where there are undivided interests belonging to Indians, adequately to protect those interests according to the statutory provisions to this end. Our conclusion simply is that the act of 1906 placed no restrictions upon the alienation of land, or undivided interests in land, of which white men who were not members of the tribe became owners.

In commenting upon *United States* v. *Rickert*, 188 U. S. 432, which was a suit brought to restrain the collection of taxes alleged to be due in respect of permanent improvements on lands and on personal property of Sioux Indians, this court said in *Heckman* v. *United States*, 224 U. S. 413, 441:

> The lands had been allotted under the general allotment act of February 8, 1887, 24 Stat. 389. One of the questions certified to this court was whether the United States had such an interest in the controversy or in its subjects as entitled it to maintain the suit; and the question was answered in the affirmative. It is true that, in that case, the statute provided that the United States should hold the land allotted for twenty-five years in trust for the sole use and benefit of the Indian allottee. But the decision rested upon a broader foundation than the mere holding of a legal title to land in trust, and embraced the recognition of the interest of the United States in securing immunity to the Indians from taxation conflicting with the measures it had adopted for their protection.

The Osage Indians still retain their own tribal form of government. In *Brader* v. *James*, 246 U. S. 88, 96, this court again reiterated that while the tribal relations of the Five Civilized Tribes exist the national guardianship continues. If the Government is still the guardian and protector of the Five Civilized Tribes, with their enlightenment and civilization, certainly while the Osage Indians maintain their own tribal form of government this protection

has not been withdrawn from them. This is well expressed in *Neilson* v. *Alberty* (Okla.), 129 Pac. 847, 851, where the Supreme Court of Oklahoma, in holding the lands of a competent Osage allottee not subject to being involuntarily alienated for prior debts, said:

> When we stop to consider that in all its dealings with the members of the Five Civilized Tribes the Government has thrown around those highly civilized and enlightened people a protection such as that named, and to then conclude that it was the intention of Congress to subject the lands of the Osages, a tribe yet maintaining their own tribal form of government, to an enforced alienation for the payment of debts, is to accuse Congress of a willful and gross neglect of duty toward these dependent people, who, while not financially dependent, are in a governmental sense helpless, and who look to the general government for protection of their landed estates. Construing the act as we have done, no such hardship and discrimination in legislation follows.

Congress has emancipated neither the noncompetent Osage Indians nor their lands from the guardianship of the Government, and therefore the case of *United States* v. *Waller*, 243 U. S. 452, relied on by the District Court, is not authority in point. There Congress had adjudged the mixed blood Chippewa Indians of the White Earth Reservation capable of managing their own affairs, and for that reason had given full power and authority to such Indians

to dispose of their allotted lands. There is no such legislative judgment that the Osage Indians who have not been granted certificates of competency are capable of managing their own affairs. On the contrary, Congress, by the Act of April 18, 1912, 37 Stat. 86, sec. 9, supplementary to and amendatory of the Osage Allotment Act, declares competent only those Osage Indians "to whom a certificate has been issued authorizing alienation of all the lands comprising his allotment, except his homestead." Under the Act of March 2, 1917, Congress clearly recognized the interest of the Government in protecting these Indians from illegal taxation by authorizing the Secretary of the Interior to use out of the Osage funds the sum of $5,000, or as much thereof as might be needed, for the appraisement of these lands—

> as a basis for the adjustment and settlement of any exception or claim made by any such Indian or by an officer of the United States in his behalf, with respect to any assessment heretofore made or that may hereafter be made prior to June 1, 1917.

An additional reason may be stated to support the right of the United States to maintain this suit. It is alleged in the bill that many of these Indians whose lands are sought to be sold are that class of minors for whom the County Court of Osage County has no jurisdiction to appoint guardians. The Supreme Court of Oklahoma has held in *Williams* v. *Hewitt*, decided January 20, 1919, Oklahoma Appellate Court Reporter, vol. 8, p. 593, that the County Court

of this county has no authority to appoint guardians for minor Osage Indians whose parents are living. The authority to protect the interests of these non-competent minor Indians must exist somewhere, and because it has never existed anywhere else, it must exist in the national government, whose wards they are. *United States* v. *Kagama*, 118 U. S. 375, 384.

The United States having capacity to sue, the right to sue in its own courts is undoubted. Constitution, Article 3, Section 2, Clause 1; Judicial Code, Section 24 (1); *United States* v. *Allen*, 171 Fed. 907.

II.

There is no plain, adequate, and complete remedy at law.

1. There is no valid statute affording adequate relief.

On September 20, 1911, a bill was filed by the United States in the District Court for the Western District of Oklahoma as a test case to determine whether or not Congress authorized the taxing of the surplus lands of noncompetent Osage Indians. From the decision of that case (216 Fed. 883) an appeal was taken to this Court by the Government, being No. 270 on the docket at the October Term, 1916, but this appeal was dismissed May 3, 1917, on motion of the Government. It thus appears that nearly all the taxes in controversy in this case accrued and became delinquent while this test case was pending, during which time no effort was made by the Government on behalf of the Indians to correct the current assessments of the lands for taxes.

The Court of Appeals affirmed the judgment dismissing the bill of complaint herein on the ground that during the whole eight years there was an adequate remedy at law under the statutes of Oklahoma, set out in its opinion. To sustain its decision the court quoted sections 11 and 14[1] of the Sessions Laws effective June 10, 1911 (Session Laws of Oklahoma, 1910–1911, pp. 334, 335; Bunn's Anno. Sup. Rev. Laws Oklahoma (1918), Secs. 7365 k and 7365 m.).

Section 11 provides for the equalization, correction, and adjustment of tax assessments by the

[1] SEC. 11. The county equalization board shall meet at the county seat, and shall hold a session commencing on the first Monday in June of each year for the purpose of equalizing taxes over the county, notice of which shall be given at least ten days prior thereto in some newspaper of general circulation in the county. * * *. Any person who may think himself aggrieved by the assessment of his property shall have the right to appear before the board for the purpose of having the assessment of his property adjusted. Complaints against the assessment shall be determined by the board in a summary manner, and the assessor's lists shall be corrected and adjusted accordingly. Provided, that an appeal may be taken from the final action of said board as provided by law. Said board shall have the authority to raise, lower and adjust individual assessments, fixing the same at the fair cash value of the property; to add omitted property and to cancel assessments of property not taxable. * * *.

SEC. 14. The board of county commissioners of each county may hear and determine allegations of erroneous assessments or mistakes or differences in the description of value of land or other property, at any session of said board, before the taxes shall have been paid, on application of any person or persons who shall, by affidavit, show good cause for not having attended the meeting of the county board of equalization, for the purpose of correcting such error, difference or mistake, and wherein a lot of land or portion thereof, or any other property, has been assessed to any one person, firm or corporation who or which did not own the same, or property exempt from taxation has been assessed, or which has been doubly or erroneously assessed, the board of county commissioners shall have power, and it shall be their duty to correct all such assessments, and if any such taxes, so erroneously assessed shall have been paid, the same shall be a valid charge against the county and shall be refunded by the board of county commissioners * * *.

Board of Equalization, upon the complaints of the party aggrieved, at its sessions to be held on the first Monday in June of each year. Section 14 authorized the Board of County Commissioners of each county to correct, on application of the taxpayer, erroneous assessments at any time before the payment of the taxes, and if any such taxes erroneously assessed have been paid, to refund the same. There was no provision in any prior law for refunding taxes paid upon erroneous assessments, and this defect was sought to be cured by the provisions of section 14.

In relying upon the provisions of section 14 as affording an adequate remedy at law in this case, the Court of Appeals evidently overlooked the fact that this section has five times been declared unconstitutional by the Supreme Court of Oklahoma. *Johnson* v. *Grady County*, 150 Pac. 497; *Atoka County* v. *Okla. State Bank*, 161 Pac. 1087; *In re Hickman*, 162 Pac. 172; *Smith* v. *The Board of Commissioners of Garvin County*, 162 Pac. 463; *In re Assessment First National Bank*, 166 Pac. 883.

The *Hickman* case involved the jurisdiction of the Board of County Commissioners to correct an erroneous assessment of the Osage allottee Hickman. The allotment of this Indian is alleged in the bill in this case to be assessed at the rate of $20 per acre, while the County Attorney stipulated in the case in the state court that its value was $8 per acre, but the jurisdiction to grant relief in the State court was

denied on the ground of the unconstitutionality of section 14.

In *Smith* v. *Board of County Commissioners* certain Choctaw freedmen sought to have refunded taxes paid, alleging that their lands were exempt from taxation under certain treaties and Acts of Congress. Jurisdiction of the Board to entertain the application under section 14 and of the courts to entertain the appeal was denied on the ground of the unconstitutionality of the section.

During the years 1910, 1911, 1912, 1913, 1914, and 1915 no remedy was provided for the refunding of taxes erroneously paid other than that attempted to be provided in this unconstitutional section, which is section 7365 m, Bunn's Anno. Sup. Revised Laws of Oklahoma, 1918. *Johnson* v. *Grady County, supra*, holding this section invalid because its subject was not clearly expressed in the title of the Act as required by the Constitution, was decided July 20, 1915, and at the 1916 session of the Oklahoma legislature this defect in the taxing laws was remedied by an Act effective February 26, 1916, providing for the refund of taxes erroneously paid. Section 7365 m 1, Bunn's Anno. Sup. Revised Laws of Oklahoma, 1918. The State legislature thus recognized that the statutes providing solely for the correction of erroneous assessments did not afford taxpayers adequate relief against erroneous or illegal taxation.

This court has held that without a provision for refunding to the taxpayer any tax, interest, or costs

which are found to be erroneous or illegal there is no plain, adequate, and complete remedy at law. *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban Co.*, 244 U. S. 499, 519, 520; *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282.

In *Union Pacific R. R. Co.* v. *Weld County*, *supra*, this Court considered whether section 5750 of the Colorado Revised Statutes, 1908, imposing upon the Board of County Commissioners the duty of refunding to the taxpayers any tax found to be erroneous or illegal, was still in force, and as the existence of the remedy contained in this section was "debatable and uncertain" in view of subsequent legislation, the Court maintained the right of the court of equity to determine the case on its merits. It is pertinent to note that section 5671 of the Revised Statutes of Colorado, 1908, provides as effectively, and in similar terms, for the correction of erroneous assessments as the Oklahoma statutes.

Further reference to the statutes of Oklahoma will indisputably show that the remedy provided for the correction of erroneous assessments does not afford the taxpayer adequate relief from such assessments. Section 7389, Revised Laws of Oklahoma, 1910, provides that if taxes levied on an *ad valorem* basis become delinquent they shall bear interest at the rate of eighteen per cent as a penalty. While section 7369 of the Revised Laws of Oklahoma of 1910 provides that pending an appeal for the correction of an assessment the appellant shall not be required to pay

taxes, there is no provision that such taxes shall not become delinquent if unpaid, nor for refunding the taxes if paid, even though they shall be determined to be erroneous.

The Court of Appeals quoted and relied upon the void statute in arriving at the conclusion that the statutes of Oklahoma furnished the aggrieved taxpayer an adequate remedy. This is made apparent by the authorities cited by that court to sustain such conclusion. While in *Singer Sewing Machine Co.* v. *Benedict*, 229 U.S. 481, this Court held that section 5750 of the Revised Statutes of Colorado, 1908, providing for the refunding of taxes erroneously paid, furnished an adequate remedy; as before pointed out in *Union Pacific R. R. Co.* v. *Weld County, supra*, where the effect of this statute had been rendered uncertain by subsequent legislation, the jurisdiction of equity to hear and determine the case was sustained.

In *Indiana Manufacturing Co.* v. *Koehne*, 188 U. S. 681, 686, the Court, in denying equitable relief on the ground that there was an adequate remedy at law, pointed out that the laws of Indiana provided for the recovery of taxes illegally paid, saying:

> * * * the corporation could pay the tax and immediately file a petition with the Board of County Commissioners to recover it back under the Act of 1853,

and,

> * * * the tax could be recovered back notwithstanding the payment to the State.

Smith v. *Douglas County*, 242 Fed. 894, was a case arising under the inheritance tax laws of Nebraska, which specifically authorized the refunding of taxes erroneously paid, upon application made within two years, and the court held the statutory remedy adequate. The other cases cited by the Court of Appeals are not in point upon the adequacy of the statutory remedy.

Stanley v. *Supervisors*, 121 U. S. 535, was not a suit in equity to restrain the collection of erroneous taxes but was a suit at law to recover taxes alleged to be in excess of what should have been paid on a just valuation.

McLaughlin v. *St. Louis Southwestern Railway*, 232 Fed. 579, was a case brought in equity to correct the alleged erroneous assessments of benefits by the Board of Assessors of road improvements under the statutes of Arkansas. The assessments complained of had been filed in the County Court, where the complaining corporation filed exceptions, and from the judgment of the County Court, pronounced after hearing on the exceptions, the corporation appealed to the Circuit Court of the County, which dismissed the appeal. "There was nothing in the bill attacking the jurisdiction of the County Court to render the judgment which it did, nor was the bill a bill of review" (p. 580). Under these circumstances, the court held that the complainant had an adequate remedy.

M'Dougal v. *Mudge*, 233 Fed. 235, was decided on the authority of the *McLaughlin* case, *supra*.

It is thus obvious that the Court of Appeals based its decision upon a void statute, passed for the purpose of providing a method of refunding taxes erroneously paid, and the authorities in point cited by that court as supporting its conclusions were cases in which the aggrieved taxpayer was afforded a valid statutory remedy to pay the taxes and recover them back if erroneously or illegally paid.

2. The case comes within the recognized heads of equity jurisdiction.

We do not rest the case, however, on the lack of a statutory remedy for the refunding of taxes which are found to be erroneous. The jurisdiction of equity to afford relief in this case is asserted upon the well-established exceptions to the general rule that a court of equity will not restrain the collection of an illegal tax on the sole ground that the tax is illegal. The general rule and its exceptions are laid down in the leading case of *Dows* v. *City of Chicago*, 11 Wall. 108, 112. "This case has been frequently followed and its governing principles never doubted." *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276, 283.

In *Dows* v. *Chicago* it was said that in order that equity might entertain jurisdiction to afford relief from illegal or erroneous taxation some special circumstances must exist bringing the case within some recognized head of equity jurisdiction which render the ordinary processes of law inadequate, such as where the enforcement of the assessment (1) would lead to a multiplicity of suits; or (2) would

constitute a cloud upon the title to real estate or work an irreparable injury. Another ground may be added to those enumerated in this case: (3) Where the taxing officers in enforcing a valid assessment are guilty of an intentional and systematic discrimination against a class of property with intention of imposing upon that class of property an undue burden of taxation equity will afford relief. *Cummings* v. *National Bank*, 101 U. S. 153; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 390; *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20; *Ex parte Young*, 209 U. S. 123; *Greene* v. *Louisville & Interurban Co.*, 244 U. S. 499; *Taylor* v. *Louisville & Nashville R. R. Co.*, 88 Fed. 350; *Lacy* v. *McCafferty*, 215 Fed. 352.

(1) Equity has jurisdiction in this case to avoid a multiplicity of suits.

The original Osage tax case involved about one thousand allotments and there are, in round numbers, about the same number affected by this decision. Conceding, *arguendo*, that there existed in the statutes of Oklahoma the right to have refunded any taxes paid upon the erroneous assessments alleged in the bill of complaint, it would have been necessary for the Government to have instituted proceedings at law in each individual instance in order to recover the taxes paid. If, as has been shown, there existed for six of the eight years during which these taxes were imposed no remedy, except by appeal from the County Boards to the courts for the correction of the erroneous assessment, a separate appeal would have

been necessary in each individual case, resulting, in any event, in about one thousand separate law suits.

In this connection we might appropriately quote the language of this Court in *United States* v. *Rickert*, 188 U. S 432, 444, where the question of the adequacy of the remedy at law to correct illegal taxation of Indians' property arose, as follows:

> It is manifest that no proceedings at law can be prompt and efficacious for the protection of the rights of the Government, and that adequate relief can only be had in a court of equity, which, by a comprehensive decree, can finally determine once for all the question of the validity of the assessment and taxation in question.

In *Cruickshank* v. *Bidwell*, 176 U. S. 73, 81, this Court, speaking through Mr. Justice Fuller, said:

> Inadequacy of remedy at law exists where the case made demands preventive relief, as, for instance, the prevention of multiplicity of suits, or the prevention of irreparable injury. The one head is well illustrated by *Union Pacific Railway Company* v. *Cheyenne*, 113 U. S. 516, and *Smyth* v. *Ames*, 169 U. S. 466, 517; and the other by *Watson* v. *Sutherland*, 5 Wall. 74.

See *Union Pacific Railway Company* v. *Weld County*, 247 U. S. 282.

Equity having acquired jurisdiction of this case in order to avoid a multiplicity of suits, the adequacy or inadequacy of the provisions of the statutes of Oklahoma is immaterial. The rule is that the stat-

utory remedies at law furnished by a State in its own courts do not oust the equitable jurisdiction of the Federal courts of equity. This has been laid down with emphatic clearness by this Court, speaking through Mr. Justice Harlan, in *Smyth* v. *Ames*, 169 U. S. 466, 516. It was argued in that case that the State had furnished a remedy at law for the revision of the action of the State Railroad Commission and that therefore the Federal courts of equity had no jurisdiction. Mr. Justice Harlan said:

> We cannot accept this view of the equity jurisdiction of the Circuit Courts of the United States. The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal court, is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a suit in that court; and he can not be deprived of that right by reason of his being allowed to sue at law in a State court on the same cause of action.

In view of this holding, the decisions of the Supreme Court of the State cited by the Court of Appeals, to the effect that the statutes of Oklahoma furnish an adequate remedy at law, have no controlling effect, and there is eliminated the only remaining reason for the decision of the court below.

(2) Equity has jurisdiction in this case to remove the cloud upon the title to these lands occasioned by the lien of the illegal tax, and to restrain irreparable injury.

Taxes upon real property are made a perpetual lien by the statutes of Oklahoma. Rev. Stat. Oklahoma, 1910, sec. 7391.

In the *Ohio Tax Cases*, 232 U. S. 576, 587, this Court, speaking through Mr. Justice Pitney, says:

> The right to invoke the equity jurisdiction is clear; for the act specifically makes the tax a lien upon the real estate of appellants, from the cloud of which they sought to free it by the bringing of these actions * * *; and the bills alleged threatened irreparable injury through the enforcement of the penalties and coercive features of the Act.

If there had been some law of Oklahoma under which the lien of these taxes "could have been effectually removed by paying them and suing to recover the money" (*Union Pacific R. R. Co.* v. *Weld County, supra*), the jurisdiction of equity to remove the cloud upon the title might be questioned. But no method of recovering taxes paid under erroneous assessments existed during these years, and the only way by which the cloud created by the lien for taxes could be removed is by the intervention of a court of equity. The payment of such taxes with no right to sue to recover the money would also work an irreparable injury to these Indians, and the jurisdiction of equity to prevent this is undoubted.

(8) Where the taxing officers in enforcing a valid assessment are guilty of an intentional and systematic discrimination against a class of property with intention of imposing upon that class of property an undue burden of taxation equity will afford relief.

The Constitution of Oklahoma, section 5, Article 10, provides that taxes shall be uniform upon the same class of subjects. Section 8, Article 10, provides that property taxed *ad valorem* shall be assessed at its fair cash value, and this provision is carried into effect by section 7307, Revised Laws of Oklahoma, 1910.

The bill alleges in this case that the lands of these Indians were so intentionally and grossly overvalued as to amount to fraud, and that they were systematically and intentionally assessed greatly in excess of their fair cash value, while other lands were systematically undervalued.

In *Taylor* v. *Louisville & Nashville R. R. Co.*, 88 Fed. 350, the court considered the action of separate Boards in assessing separate classes of property where one Board, an essential part of the taxing system, intentionally violated the law by uniformly undervaluing certain classes of property while other Boards assessed other classes of property at their full value. The court held that though this was a literal compliance with the law, it made the whole assessment, considered as one judgment, a fraud upon the fully assessed property, and was a proper case for equitable relief.

In *Lacy* v. *McCafferty*, 215 Fed. 352, 354, the Circuit Court of Appeals for the Eighth Circuit, considering the statutes of Oklahoma, said:

> From these various provisions of applicatory law it is manifest that if complainant's prop-

> erty and other property of its kind was assessed for the purposes of taxation at a greater rate than the property of other corporations and individual citizens was assessed, it was in contravention of the constitutional and statutory law of the state and of the United States and of course was unlawful, but that fact in itself would not entitle complainant to resort to a court of equity to secure relief; it must further appear that the assessing officers made the erroneous valuation not accidentally or inadvertently with respect to a single piece or kind of property, but systematically and intentionally with respect to one or more classes of property, with the intention of imposing upon that class of property an undue burden of taxation. *Cummings* v. *National Bank*, 101 U. S. 153, 25 L. Ed. 903; *Pittsburgh, etc. Railway Co.* v. *Backus*, 154 U. S. 421, 14 Sup. Ct. 1114, 38 L. Ed. 1031; *Coulter* v. *Louisville & Nashville R. R. Co.*, 196 U. S. 599, 25 Sup. Ct. 342, 49 L. Ed. 615; *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, 28 Sup. Ct. 7, 52 L. Ed. 78, 12 Ann. Cas. 757; *Taylor* v. *Louisville & N. R. Co.*, 31 C. C. A., 537, 88 Fed. 350.

In *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, this Court quoted with approval the opinion of Circuit Judge Taft in *Taylor* v. *Louisville & Nashville R. R. Co.*, *supra*, as follows (p. 517):

> "The sole and manifest purpose of the constitution was to secure uniformity and equality of burden upon all the property in the State. As a means of doing so (conceding that defendant's construction is the correct

one), it provided that the assessment should be according to its true value. It emphasized the object of the section by expressly providing that no species of property should be taxed higher than any other species. We have before us a case in which the complaining taxpayer, and other taxpayers owning the same species of property, are taxed at a higher rate than the owners of other species of property. This does not come about by legislative discrimination, but by the intentional and systematic disregard of the law by those charged with the duty of assessing all other species of property than that owned by complainant and its fellows of the same class. * * *. The question presented is, then, whether, when the sole object of an article of the constitution is being flagrantly defeated, to the gross pecuniary injury of a class of litigants, and one of them appeals to a court of equity for relief, it must be withheld because the only mode of granting it will involve an apparent departure from the method marked out by the constitution and the law for attaining its sole object. We say 'apparent' departure from the constitutional method, because that instrument contemplated a system in which all property should be assessed at its real value. * * *. The court is placed in a dilemma, from which it can only escape by taking that path which, while it involves a nominal departure from the letter of the law, does injury to no one, and secures that uniformity of tax burden which was the sole end of the constitution.

> To hold otherwise is to make the restrictions of the constitution instruments for defeating the very purpose they were intended to subserve. It is to stick in the bark, and to be blind to the substance of things. It is to sacrifice justice to its incident."

In the *Greene* case it was alleged that the Board of Valuation and Assessment, in assessing the franchise taxes of railroads in Kentucky, assessed them on the basis of 75 per cent of actual value, while taxable property in general was assessed systematically and intentionally at not more than 52 per cent of its actual value. The Court sustained the jurisdiction of equity to relief against this discriminatory and non-uniform assessment, stating the question to be determined as follows (p. 514):

> Is discriminatory taxation, contravening the express requirements of the state constitution, beyond redress in the courts of the United States, their jurisdiction being properly invoked, when the discrimination results from divergent action by different assessing boards whose assessments are not subject to any process of equalization established by the State, and where the diverse results are the outcome, not, indeed, of any express agreement among the officials concerned, but of intentional, systematic, and persistent undervaluation by one body of officials, presumably known to and ignored by the other body, so that in effect the two bodies act in concert? In our opinion, the answer must be in the negative.

If discriminatory and nonuniform taxation by different taxing boards, the outcome of no express agreement among the officials concerned, but of intentional undervaluation by one body known to and ignored by the other, is not beyond redress by the courts of the United States, certainly systematic and discriminatory taxation by the same board and intentional overvaluation of the lands of noncompetent Indians who are wards of the United States is not beyond redress in the courts of the United States.

The bill alleges a tender of the taxes admitted to be due upon a fair and equal assessment of the Indians' land and expressly alleges, and accepts, as the fair basis for the assessment of the taxes the appraisement made under the Act of Congress of March 2, 1917.

This brings the case within the procedure of *Cummings* v. *Bank*, *supra*, approved in *Stanley* v. *Supervisors*, 121 U. S. 535, 550. See also *Taylor* v. *Louisville & N. R. Co.*, 88 Fed. 350, 373.

CONCLUSION.

The decree of the Circuit Court of Appeals is erroneous and should be reversed and the case remanded to the District Court for further proceedings.

ALEX. C. KING,
Solicitor General.

LESLIE C. GARNETT,
Attorney.

APRIL, 1919.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 309

The United States of America, Appellant.

vs.

The Board of County Commissioners of Osage County, Oklahoma, et al.,

Appellees.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF APPELLEES.

Preston A. Shinn,
Corbett Cornett,
Attys. for Appellees.

Pawhuska Capital, Pawhuska, Okla.

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 881.

The United States of America, Appellant,

vs.

The Board of County Commissioners of Osage County, Oklahoma, et al.,

Appellees.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF APPELLEES.

APPELLEES' STATEMENT OF THE CASE

This case was advanced for hearing by this Court on the 24th day of March, and set for hearing on the 14th. day of April. The brief of appellant has not been

served on the appellees, and we fear it will be too late to prepare and have brief printed after service of brief upon us, and for that reason this brief is being prepared along the lines of argument pursued by the appellant in the Circuit Court of Appeals.

A case much like the instant case, and between these same parties, where many if not all the questions involved in this case were decided, will be found in the 193 Federal, 485, the 216 Federal, 883, and was by this Court dismissed on motion of the United States, appellant, 244 U. S. 663, 61 Law ed. 1377. In that case the United States brought suit to restrain the "enforcement by county officers of taxes levied for the year of 1910 upon certain lands allotted to Osage Indians, under the Act of June 28, 1906, 34 Stat. 539, in Osage County, in this state, on the ground that such lands were not subject to taxation for that year." The present suit was instituted by the same plaintiff on the theory that, the lands though taxable are not subject to sale by the state to enforce the tax. In the present case a motion was filed asking that the case be dismissed on several grounds, and the District Court for the Western District of Oklahoma sustained the motion and dismissed the Bill of Complaint on the ground that "there is no proper party plaintiff", which was the first ground set forth in the motion.

The appellees briefed their case in the Circuit Court of Appeals for the Eighth Circuit on the first, fourth, and fifth grounds of their said motion, and the Court of Appeals affirmed the District Court for the Western District of Oklahoma on appellees' fourth and

fifth ground contained in their said motion to dismiss.

The fourth and fifth grounds are:

"4. The said Bill of Complaint does not state a cause in Equity."

"5. The plaintiff, and each and all of the Indians upon whose behalf this suit is brought, have a plain, speedy, adequate and complete remedy at law."

BRIEF OF ARGUMENT.

I.

THE UNITED STATES IS NOT A PROPER PARTY PLAINTIFF, BECAUSE CONGRESS, THE ONLY BODY AUTHORIZED TO SPEAK FOR THE PLAINTIFF, HAS EMANCIPATED THE OSAGE INDIANS AND THEIR SURPLUS LANDS FOR THE PURPOSES OF TAXATION FROM GOVERMENTAL CONTROL. Osage Allotment Act, 34 Stat. L. 539; 193 Federal, 485; 216 Federal 883; United States v. Waller, 243 U. S., 452, 61 Law ed., 843; 37 Stat. L. 86; McCurdy v. United States, 246 U. S. 263, same 62 Law ed. 706.

II.

THE UNITED STATES AND EACH MEMBER OF THE OSAGE TRIBE OF INDIANS HAD A PLAIN SPEEDY, ADEQUATE AND COMPLETE REMEDY AT LAW, AND THE BILL OF COMPLAINT IS WITH OUT EQUITY. Section 3224 of Revised Statutes; Pittsburg, C. C. & St. L. R. Co. v. Board of Public Works, 172 U. S. 38, 39; Board of Commissioners v. Field, 162 Pac. Rep. 733; A. T. & S. F. Ry. Co. v. Eldredge, 166 Pac. 1085; Huckins Hotel v. Commissioners, 166 Pac. 1043; Board of Commissioners v. Tinklepaugh, 152 Pac. 1119.

ARGUMENT.

I.

THE UNITED STATES IS NOT A PROPER PARTY PLAINTIFF, BECAUSE CONGRESS, THE ONLY BODY AUTHORIZED TO SPEAK FOR THE PLAINTIFF, HAS EMANCIPATED THE OSAGE INDIANS AND THEIR SURPLUS LANDS FOR THE PURPOSES OF TAXATION FROM GOVERNMENT CONTROL.

The appellants have briefed this case on two fundamentally erroneous propositions: First, that the Congress is not supreme in the disposal of the territory and property of the United States, and in the management of the Indians and their property; and, second, that all allotment titles are in trust for the benefit of the Indian with full legal title in the United States; that the United States never intends to emancipate the Indian and his property from Governmental supervision.

We concede that the Federal Constitution vests in Congress the authority to dispose of the territory and property of the United States, and to regulate commerce with the Indian tribes, and that the states have primarily no authority in this regard whatsoever. But we insist that Congress because of its plenary powers can emancipate the Indian and his lands in whole or in part: that the Congress has authority to handle one Indian tribe and their property differently from that of another, and that the Court will look to the legislation of Congress to ascertain the intent, and not to the many decisions of the Courts construing legislat-

ion of a different meaning from the legislation involved in this case. That the Osages are in no way controlled by the General Allotment Act of 1887, but, like the Five Civilized Tribes, are controlled by separate and distinct legislation. That in so far as taxation of the surplus lands is concerned, the Congress intended that the lands be subject to taxation, and to enforced sale, if necessary, to collect the tax.

The Osages bought and paid for their reservation, the title being taken in the name of the United States, but the title held by he United States was the naked legal title. The reservation was purchased from the Cherokee Indians at so much per acre, and the title held by the Osages was the same as that held by the Five Civilized Tribes. The title held today by the individual allottees is the same character of title as is held by the members of the Cherokee tribe, to-wit, a fee simple title with restrictions against voluntary sale, as limited in the Allotment Act of June, 1906 (34 Stat. L. 539.).

In the recent case of McCurdy v. United States, 246 U. S. 263, 26 Law ed. 706, same being a tax case wherein the Supreme Court had occasion to review the Act of June 28, 1906, along with the Act of April 18, 1912, the Court specifically held that the Osages came within the rule of "gradual emancipation" in these words:

> "Congress, concluding apparently that the enjoyment of wealth without responsibility was demoralizing to the Osages, decided upon the policy of **gradual emancipation.**"

In the fourth paragraph of Section 2 of the Act of June 28, 1906, Congress said that,

> "Each member of said tribe shall be permitted to designate which of his three selections shall be a homestead, and his certificate of allotment and deed shall designate the same as a homestead, and the same shall be inalienable and **non-taxable** until **otherwise** provided by act of Congress. The other two selections of each member, together with his share of the remaining lands allotted to the member, shall be known as surplus land, and shall be inalienable for twenty-five years, **except as hereinafter provided.**"

The Court will note that as to the "homestead" The Act makes them "inalienable and no-taxable," but as to the surplus lands there is nothing said as to taxation, but that the same cannot be alienated, "except as hereinafter provided." Paragraph seven of this section provides for the issuance of certificates of competency; that where certificates are issued the surplus lands shall become immediately subject to taxation; and, "provided, that the surplus lands shall be non-taxable for the period of three years from the approval of this act, except where certificates of competency are issued or in case of the **death** of the allottee, unless otherwise provided by Congress" (meaning, we believe, that Congress reserved the right to make the surplus lands subject to taxation within a period less than three years, if they so desired, but this was never done). This paragraph which provides the exceptions against non-alienation, mentioned in paragraph four of sec-

tion two, subjects the surplus lands to taxation, thereby subjecting them to enforced alienation by the state for the purpose of enforcing the tax, although the lands were not subject to voluntary alienation by the allottee, unless he had received a certificate of competency. To this extent the Osages and their lands have been "emancipated" by Congress and come within the rule announced in several cases, and in the recent case of United States v. Waller, 243 U. S. 459, 460, 61 Law Ed. 486, wherein this Court said:

> "Before dealing with its interpretation, it is necessary to have in mind certain matters which are well settled by the previous decisions of this Court. The tribal Indians are wards of the government, and as such under its guardianship. It rests with Congress to determine the time and extent of emancipation.. Conferring citizenship is not inconsistent with the continuation of such guardianship, for it has been held that even after the Indians have been made citizens, the relation of guardian and ward for some purposes may continue. On the other hand, Congress may relieve the Indians from such guardianship and control, in whole or in part, and may, if it sees fit, clothe them with full rights and responsibilities concerning their property, or give to them a partial emancipation if it thinks that course better for their protection. United States v. Nice 241 U. S. 591, 598, and cases cited."

The Congress released these lands to the state for taxation. Then it is for the state to say whether or not the state shall raise its revenues for the purpose of maintaining the state from the source of taxation on lands. There can be no divided authority in this regard. If the lands are subject to taxation by the state, then the state can enforce the tax by a sale of the lands, as provided by the laws of the state, or else the lands are not subject to taxation. The right to tax the property within a state is a sovereign right, except that the state cannot tax the territory and property of the United States, but when the United States conveys its title to individuals, and the Congress does not except the property from ' xation, but says, as in this case, that the same shall be subject to taxation after three years, there should be no further controversy as to the right of sale by the taxing authority to enforce payment of the tax.

The rule was early stated by the Supreme Court in McCulloch v. Maryland, 4 Wheaton 306: "That the power to tax involves the power to destroy," and this rule has been applied in a good many different situations by the courts of this country since that time. The Supreme Court must have had that idea in mind when they used the following language in the well known Indian tax case of United States v. Rickert, 188 U. S. 438, 47 Law Ed. 536:

> "To say that these lands may be assessed and taxed by the county of Roberts under the authority of the state is to say that they may be sold for the taxes, and thus become so burdened that the the United States could not discharge its obligations to the Indians without itself paying the taxes imposed from year to year, and thereby keeping the lands free from incumbrances."

The Circuit Court of Appeals held in the 216 Federal 883, that these lands were subject to taxation, and the Supreme Court held in the Rickert case that if they are subject to taxation they are subject to sale for the purpose of enforcing the tax.

Congress placed a legislative construction on the Act of June 28, 1906, in Section 7 of the Act of April 18, 1912, when it closed the section in these words: "Provided further, that nothing herein shall be construed so as to exempt any such property from liability for taxes." The Congress did not say that "nothing herein shall be so construed so as to exempt any such property from taxation," but they intimated very strongly that the property itself was liable for the taxes, provided, of course, that the state law made the taxes a lien on the land.

Appellants contend that the proviso in Section 7 (just quoted) does not apply to the lands of the living but only to the lands of the deceased. In the case of McCurdy v. United States, 246 U. S. 263, the United States, on pages 16, 17 and 18 of their brief, took the same position, to-wit, that the proviso applied only to the property of deceased Osages, and the Court answered this argument in the opinion as follows:

> "And there are in both the Act of 1906 and in that of 1912 provisions which show that Congress intended to restrict the tax exemption. By Section 2 of the Act of 1906 the surplus lands became taxable after three years, even if they remained inalienable. By Section 7 of the Act of 1912 both the lands and the funds of allottees or their heirs

> are protected against claims arising prior to competency, inheritance or removal of restrictions; But it is expressly provided 'that nothing herein shall be construed so as to exempt any such property from liability for taxes.'"

The subject matter of Section 7 of the Act of April 8, 1912, is involuntary alienation to enforce claims against the estate of Osages, closing with the exception "that nothing herein shall be construed so as to exempt any such property from liability for taxes." The "liability" or non-liability of the estate was the subject matter of the section just preceding the last clause of the section.

The Supreme Court in the McCurdy case answered much of the many immaterial propositions presented in this Court in this case in the brief of the appellants and in these words:

> "Congress apparently believed that in order to prepare the Indian for complete independence, he must be educated in self-control, and that this could best be done by committing to him gradually the care of his property. That course necessarily involved the risk of some property being lost through improvidence. But in the case of the Osage the risk was not attended by serious danger. Even if the whole trust fund should be released and, despite supervision, improvidently spent, the legally competent allottee would still have his homestead and his share in valuable undivided oil, gas and coal rights; and the legally incompetent, his surplus lands in addition.'

In view of the above language was it not the intention of Congress, as evidenced by paraghaphs 4 and 7 of Section 2 of the Act of 1906, to educate the Osages in self-control by placing upon the allottee the

responsibility of looking after the payment of his taxes? And as to the Osages "the risk was not attended by serious danger?" In fact, there is but little, if any, danger.

Appellants would have the Court to understand that unless the Department of the Interior looked after the Osages and their taxes, and paid these taxes out of the Indian's trust funds, that the taxes would never be paid, and the lands sold for taxes. Of the 2229 enrolled Osages considerably more than three-fourths have paid their taxes, including many so-called incompetent full-bloods, and the remainder are ready to pay whenever they learn that they must settle. The lands involved are leased by farmers and cattlemen for amounts greatly in excess of the annual tax, and the logical thing always would be to pay one's taxes from the returns from the subject-matter taxed. Each member of the Osage tribe received for the year of 1918, from land rents, oil and gas royalties, and interest on funds held by the United States, an amount in excess of $4,000.00 A family of four would receive $16,000.00, and the average annual tax on the 495 acres of surplus land by each Osage is considerably less than $100.00. It is suggested in brief of appellants that the situation is unfair; that the competent Osage can sell a tract of his land for the purpose of paying his taxes, while the infant and the legally incompetent are handicapped, in that they cannot sell land for the purpose of paying taxes. There is not a single Osage to be found who would be compelled to sell land for the purpose of paying his taxes. But if one could be found, then the Act of March 3, 1909 (35 Stat, L. 778), would grant relief.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of the Interior be, and he hereby is, authorized and empowered, **upon application,** to sell, under such rules and regulations as he may prescribe, **part** or all of the surplus lands of **any member** of the Kaw or Kansas and the Osage Tribes of Indians in Oklahoma; provided, that the sales of the Osage lands shall be subject to the reserved rights of the tribe in oil, gas, and other minerals."

Title is Not in Trust.

The appellees urge that the title held by Osage allottees is in trust, and therefore that the same should come under the cases contruing the Act of 1887, to-wit, the "Rickert" and other cases. The Act of June 28, 1906, provides for the issuance of deeds to be signed by the Principal Chief upon behalf of the tribe, and approved by the Secretary of the Interior, which deed contains the following:

"Whereas, Section 8 of the act provides that all deeds to said lands, or any part thereof, shall be executed by the Principal Chief of the Osages, but no deed shall be valid until approved by the Secretary of the Interior..

" Now, therefore, I, the undersigned, Principal Chief of the Osage Tribe of Indians, by virtue of the power and authority vested in me by the Act of Congress, have granted and conveyed, and by these presents do grant and convey, unto the said ..... all right, title and interest of the United States and the Osage Tribe of Indians in and to the following described lands situated on the Osage Reservation in Oklahoma, to-wit:

....

containing ..... acres, more or less, according to the United States survey thereof, to have

and to hold the same unto the said ..... h.... heirs, executors, administrators, and assigns, forever; subject, however, to all the conditions, limitations, and provisions of said act of Congress, one of which is that the homestead selection shall be inalienable and non-taxable until otherwise provided by act of Congress, and all mineral in said land is reserved to the Osage tribe of Indians for the period of twenty-five years from and after the **eighth day of April 1906".**

The Secretary of the Interoir prepared the form of deed in each instance, thereby construing the Act of 1906, and there can be no doubt but that it is a deed in fee-simple, with restrictions agains alienation. The deed to the surplus lands reads same as above, except the last few lines, which reads as follows:

"One of which is that the oil, gas, coal, or other minerals covered by the lands for the sedection & division of which provision is herein made are hereby reserved to the Osage Tribe for a period of twenty-five years from and after the eighth day of April, nineteen hundred and six."

Appellants rely upon Section 5 of the Act of June 28, 1906, in support of their contention that the surplus lands are held in trust, which section reads:

"That at the expiration of the period of twenty-five years from and after the **first day of January, nineteen hundred and seven,** the lands, mineral interests and moneys herein provided for and held in trust by the United States shall be the absolute property of the individual members of the Osage Tribe, according to the roll herein provided for, or their heirs, as herein provided, and deeds to said lands shall be issued to said members, or to

their heirs, as herein provided, and said moneys shall be distributed to said members, or to their heirs, as herein provided, and said members shall have full control of said lands, moneys, and mineral interests, except as herein provided."

The rule is well established that an act of Congress will be construed as a whole, to the end that all of said act may stand, and in the light of that rule we wish to study Section 5, supra. The Court will notice that the date mentionad in Section 5 is January 1st, 1907. Twenty-five years from that date will be January 1st 1932. Therefore the section cannot refer to the allotted lands, as the deeds have been issued, and the restriction against alienation is 25 years from June 28, 1906, the deeds being in **fee simple.** This section cannot refer to the minerals on the allotted lands, as this period is 25 years from April 8, 1906, (see Section 3—mineral section—of the Act of June 28, 1906, and the deeds supra). Then to what lands and mineral interests does Section 5 apply? The section is in the act for a purpose, but its construction must not interfer with the deeds that have been issued, and the thousands of acres that have been sold by the allottees.

Prior to the approval of the allotment act of June 28, 1906, all the lands, moneys and mineral interests of the Osages were held in trust by the United States, and all that was not taken from the trust holding by the Act of June 28, 1906, are still in trust. Several tracts and the minerals therein are still held in trust, these having been reserved by the Act of June 28, 1906 from selection and allotment. The ninth paragraph of

Section 2, in speaking of the reserves for dwelling purposes, says that certain tracts are reserved to the Indians for dwelling purposes, and that they are reserved "for a period of twenty-five years from and after January 1, 1907". This supplies the land mentioned in Section 5, and the period for terminating the trust is identical, to-wit, January 1, 1932.

We find from Section 4 of the Act that the moneys are held in trust by the United States for the period of twenty-five years from January 1, 1907, except as in the act provided. This provision, then, supplies the money referred to in Section 5, and the date of terminating the trust is identical in the two sections, to-wit, January 1, 1932.

The Act provides for the issuance of certificates of competency, and the sale of lands thereunder. It is common knowledge that thousands of acres have been sold by the allottees. The Act in paragraph seven of Section 2, provides, that the minerals "upon said allotted lands shall become the property of the individual owner of said land at the expiration of said twenty-five years," and the surface owner in many instances will not be "individual members," mentioned in Section 5. Evidently Congress did not have in mind the minerals under the allotments for which deeds have been issued, so it must have been the minerals under the lands that have been reserved, supra, as Section 5 provides that the minerals therein mentioned shall go to the allottee, or his heirs, on and after January 1, 1932, while the minerals under the allotments go to the surface owner, after April 8th, 1931, unless Congress

should extend the period. The deeds, following the Act, reserves the minerals until April 8, 1931.

If Congress by the Enabling Act for the admission of Oklahoma as a state made citizens of the Osages, then they must have intended that these deeds be in fee simple, as it has been the general policy of Congress to have fee simple deeds issued to those Indians who are citizens of the United States.

In Libby v. Clark, 118 U. S. 250, the Supreme Court said:

> "The special allotments to the chiefs and head men of the Ottawa Indian tribe, authorized by the third article of the Treaty of June 24, 1862, were subject to the limitations on the power of alienation prescribed by the seventh article of the same treaty.
>
> "Such limitation on the power of conveyance did not deprive the title of the character of a fee simple estate."

In United States v. Paine Lumber Company, 206 U. S. 473, 51 Law Ed. 1142, the Court said:

> "The restraint upon alienation must not be exaggerated. It does not of itself debase the right below a fee simple," citing Libby v. Clark, supra.

The Osages hold the same character of title as is held by members of the Five Tribes, and Tiger v. Western Investment Co., 221 U. S. 313, is authority for the statement that the Five Tribes hold patents in fee simple.

Act of March 2, 1917.

This Court will take notice of the fact that in the preparation of the Indian Appropriation Bill, many provisions go into the bill because the Department requests it, and that where it is unopposed it goes in without any investigation by the Indian Committee of the prior laws applicable to the particular tribe.

Lands are assessed (or appraised) for taxing purposes by officers elected for that purpose by the state, and possibly by the Federal Government when the government exercises its right to tax lands, as it did shortly after the civil war, but we know of no instance in which the Congress has interfered with the states in the assessment and collection of taxes on lands which the state had the right to tax. This Act of March 2, 1917, would give the Secretary of the Interior the right to make an appraisment "of all lands of Osage County, Oklahoma, owned by Osage Indians as allottees or as heirs of tribal members." Judicial notice will be taken by this Court that many thousands of acres of land are owned by tribal members, or allottees, who have received certificates of competency, and whose lands are subject to sale by the allottee, and is subject to taxation, by express direction of Congress; that many "heirs of tribal members" are white people, and under Section 6 of the Act of April 18, 1912, the restrictions were removed in these words: "When the heirs of such deceased members have certificates of competency or are not members of the tribe, the restrictions on alienation are hereby removed," yet we find that the Act of March 2, 1917, as recommended

by the Secretary of the Interior would give him the right to appraise these unrestricted lands, and interfere with the state in the collection of the taxes. Of course, this cannot be. "And the appraisement so made **may** be taken as a basis for the adjustment and settlement of any exception or claim made by any Indian or by any officer of the United States in his behalf." The word "may" as used herein will be construed to have its ordinary meaning, and not to mean ~~"must"~~ or "shall", as contended for by the appellants. The facts are that this Act of March 2, 1917, was placed in the Appropriation Bill, and was recommended by the Secretary of the Interior, with the thought that the Legislaure of Oklahoma would also pass an act which would provide for a re-appraisment of these lands, but the legislature refused to pass the bill that was presented to it, and passed the following Act instead:

> "Section 1. The Board of County Commisioners of Osage County, Oklahoma, at any regular meeting of said board, are hereby authorized to remit any penalty which has attached to any taxes for the years of 1910, 1911, 1912, 1913, 1914 and 1915, of any lands belonging to members of the Osage Tribe of Indians; provided, the full amount of taxes heretofore levied against said lands, exclusive of penalty, shall be tendered to the county treasurer of Osage County on or **before the first day of October 1917.**" (1917 Session Laws, pages 387, 388.

This Act carried an emergency clause and became effective upon its approval, March 23, 1917. The County Commissioners of Osage County passed the proper resolution, and several hundred of the Osages paid their taxes under this law, saving all the penalty. Other Osages were informed that this suit was to be brought and awaited the outcome thereof.

Tax a Lien on Land.

Appellants devote much space to the argument that even though Congress intended by its legislation to subject the Osage lands to taxation, the same would not be subject to a tax lien, unless Congress had so declared. This contention is based on a familiar rule that the tax would not become a lien upon the land, unless the statute subjecting the property to taxation also provided that the tax would become a lien, and that the property could be sold to enforce same. Many cases are cited by appellants, but they are not in point here.

Congress by the Act of June 28, 1906, did not subject these lands to taxation, but **released** the lands to the State of Oklahoma for the purposes of taxation, if the revenue laws of the state impose a tax on land. Oklahoma might have had a system of taxation, or might yet adopt a system, that would not subject land as a source of revenue for the purposes of maintaining the state. That is a matter for the state to decide for itself. The statute which subjects these lands to taxation also creates a lien upon the land:

> "Taxes upon real property are hereby made a perpetual lien. Taxes due from any person upon personal property shall be a lien upon real property owned by such person in the county where the taxes are levied, * * *" Section 7391, Revised Laws of Oklahoma, 1910.

This section has been the law of the state long prior to the compilation of 1910. And insofar as real property is concerned is the law today. Section 7302 of the Laws of 1910 says that:

> "All property in this state, whether real or personal, including the property of corporations, banks and bankers, except such as is exempt, shall be subject to taxation."

The laws of the state prescribe a procedure for the sale of lands for the purpose of collecting unpaid taxes.

Decree of Trial Court.

The trial court in rendering a decree in this case had in mind the law as stated by this Court in the Waller case, supra, and more especially that paragraph heretofore set forth in this brief: that the authority to handle the Indians and their lands was in Congress; that Congress had the right to "emancipate" the Indian, and that in so doing Congress could "emancipate" the Osages "in whole or in part," and may give "to them a partial emancipation if it thinks that course better for their protection;" that by making the surplus lands subject to taxation, and sale, if necessary to enforce the tax, the Congress had to that extent intended that the Osages and their surplus lands be emancipated from Government control; that the foregoing being true, the United States had no interest in the controversy and therefore was not a proper party plaintiff herein.

We respectfully submit that Congress is the only govermental agency having authority in the premises,

and authorized to speak for the Appellant; that to the extent set forth in the Act of June 28, 1906, with reference to taxation, Congress had disposed of its' territory and property, and for that reason we come within the rule in the Waller case, supra, and the decree of the trial Court should be sustained.

II.

THE UNITED STATES AND EACH MEMBER OF THE OSAGE TRIBE OF INDIANS HAS A PLAIN SPEEDY, ADEQUATE AND COMPLETE REMEDY AT LAW, AND THE BILL OF COMPLAINT IS WITH OUT EQUITY.

The Circuit Court of Appeals affirmed the trial court on the ground that the appellant, and the Osages each had a plain, speedy, adequate and complete remedy at law (citing section 267 of the Judicial Code), saying: "The fifth ground above stated is insisted upon here to sustain the judgment of dismissal. If this ground is well taken we have no authority to consider the other points urged." We had briefed our views touching the first ground, and the one on which the trial court had dismissed the Bill of Complaint, but the Court of Appeals rested their judgment on the proposition stated above.

At the time of assessment of the lands involved for the purposes of taxation, the following laws were effective in Oklahoma:

> "The township assessor, the township clerk and the township treasurer shall compose the board of equalization for each township: the town or city assessor, mayor or president of the board of

trustees, and city clerk, shall compose the board of equalization for cities, towns and villages, and said board shall meet on the third Monday of April of said year to examine the assessment rolls of such township, cities or towns, and to hear all complaints of persons who shall feel aggrieved by their assessments, and to correct, equalize and adjust the assessments, therein increasing or decreasing individual assessments or the aggregate assessments of such city, town village or township. and if necessary they may require a reassessment of any or all the property therein, such correction, Equalization, adjustment or re-assessment, shall be for the purpose of causing the same to be assessed at its fair cash value as herein defined, and decision of said board shall be final at to individual assessment unless an appeal is taken to the Board of county commissioners on or before the first Monday in June next following. The decision of the board of county commissioners shall be final in all cases." Effective March 10, 1909.

Compiled Laws of 1909, page 1526).

On June 17, 1910, the following amendment to the foregoing section became effective:

"Appeals from the board of county commissioners may be made to the county court in the county in which the property is located. But such appeal must be made within thirty days from the action of the board. Before the assessment of any individual as returned by the assessor shall be increased, the board of equalization shall give such individual at least five days' notice in writing to appear and show cause why such assessment shall not be increased. Said notice shall be deposited in the United States mail postage prepaid, address

ed to such individual at his postoffice address as shown by the assessor's return." (Revised Laws of 1910, Vol 2, pages 1995-6.)

"The board of county commissioners of each county or a majority thereof shall constitute the board of equalization for the county, and shall hold a session commencing on the first Monday in June of each year for the purpose of equalizing, correcting and adjusting the assessment rolls in their county between the different townships by increasing or decreasing the aggregate assessed value of the property of any class thereof, in any or all of them to conform to the fair cash value therof as herein defined; provided, that the county board of equalization may for the purpose of having the assessment of any city town or township corrected, order a **re-assessment** of **any or all of the property therein". (Compiled Laws of 1909, page 1526, also Laws of 1910, Section 7367).**

"The proceedings before the board of equalization and appeals therefrom shall be the **sole method** by which assessments or equalizations shall be corrected or taxes abated. Equitable remedies shall be resorted to only where the aggrieved party has no taxable property within the tax district of which complaint is made." (Sec. 7370, Revised Laws 1910, effective June 17, 1910.)

After the first assessment of the Osage surplus lands the legislature of the state passed the following, abolishing township officers:

"On and after the first Monday in January 1912 the offices of township assessor and township board of equalization shall be abolished. A board of equalization is hereby created, to be composed of the county commissioners, and the county assessor shall be secretary of the said board. The county equalization board shall meet at the county seat, and shall hold a session commencing on the

first Monday in June of each year for the purpose of equalizing taxes over the county, notice of which shall be given at least ten days prior thereto in some newspaper of general circulation in the county. * * * * Any person who may think himself aggrieved by the assessment of his property shall have the right to appear before the board for the purpose of having the assessment of his property adjusted. Complaints against the assessment shall be determined by the board in a summary manner, and the assessor's lists shall be corrected and adjusted accordingly; provided, that an **appeal** may be taken from the final action of said board as provided by law. Said board shall have the authority to raise, lower and adjust **individual** assessments, fixing the same at the fair cash value of the property; to add omitted property and to cancel assessments of property not taxable. * * * *" (Session Laws of 1910-11, p. 334, Sec 11, effective June 10, 1911).

The Supreme Court of the State having declared section 14 of the Act next above unconstitutional, for the reason that the title of the Act was not sufficient to include a part of the subject-matter contained in section 14, the Legislature enacted the following law:

"Section 2. Any taxpayer feeling aggrieved at the assessment as made by the assessor, or the equalization as made by the county board of equalization may, during the session of said board, or, if the same is closed, within ten days after the first Monday in June, file with said assessor as secretary of said board, a written complaint specifying his grievances and the pertinent facts in relation thereto in ordinary and concise language

and without repetition, in such manner as to enable a person of common understanding to know what is intended; and said board shall be authorized and empowered to take evidence pertinent to said complaint and for that purpose is authorized to compel the attendance of witnesses and the production of books and papers by subpoena and to correct or adjust the same, as may seem just. And the stenographer of the county court is directed, at the request of the board, or taxpayer, to take shorthand notes of such testimony and to transcribe such complaint and evidence, and a full transcript of the action of the board thereon, and file the same with his certificate as to accuracy in the district court, the filing of which transcript shall complete said appeal which shall, in due course, be examined and reviewed by said court and affirmed, modified or annulled as justice shall demand." etc. (Session Laws 1913, ch 240, Art 1, sec. 2., page 636.)

"Section 6. The full amount of the taxes assessed against the property of any such aggreived person shall be paid at the time and in the manner provided by law; and if at the time such taxes or any part thereof become due, any such appeal is pending, it shall abate and be dismissed upon a showing that such taxes have not been paid.

"When such taxes are paid, the persons paying the same shall give notice to the officer authorized to collect them that an appeal involving such taxes has been taken and is pending. It shall be the duty of such collecting officer to hold such taxes so paid separate and apart from other taxes collected by him.

"If upon the final determination of any such appeal, it shall be determined that the taxes were il-

legally collected as not owing to the state, county or subdivision of the county, the court shall render judgment showing the correct and legal amount of taxes owed by such appellant, and shall issue an order in accordance with the court's finding; and if such order show that the taxes so paid are in excess of the legal and correct amount due, the collecting officer shall pay to such person the excess tax, and shall take a receipt therefor." (Session Laws 1913, supra, page 638.)

"Section 7. In all cases where the illegality of the tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes showing the grounds of complaint and that suit will be brought against the officer for a recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him for a period of thirty days, and if within such time summons shall be served upon such officer in a suit for a recovery of such taxes, the officer shall furter hold such taxes until the final determination of such suit. All such suits shall be brought in the court having jurisdiction thereof, and they shall have precedence therein If, upon final determination of any such suit, the court shall determine that the taxes were illegally collected, as not being due the state, county or subdivision of the county, the court shall render judgment showing the correct and legal amount of taxes due by such person, and shall issue such order in accordance with the court's findings, and if such order shows that the taxes so paid are in excess of the legal

and correct amount due, the collecting officer shall pay to such person the excess and shall take his receipt therefor." (Session Laws 1913, supra 638).

Section 15 of the act of 1910-11 (Session Laws 1910-11 p. 336) provided for appeals to the district or superior courts from the board of equalization, if taken within 30 days after the adjournment thereof.

The Supreme Court of the state having declared that a certain section of the law required that notice should be given before the penalty attached, the legisature enacted a new section, fixing the penalty, and providing:

"No demand of taxes shall be necessary, but it shall be the duty of every person subject to taxation under the law to attend the treasurer's office and pay his taxes; and if any person neglects so to attend and pay his taxes until after they have became delinquent, the treasurer is directed and required to collect the same in the manner provided by law." (Session Lawsof 1915, p. 44, Sec. 1).

The same session of the legislature passed an act effective February 3, 1915, fixing the penalty at 6 per cent until the first of June following, and if not paid then the penalty was fixed at 18 per cent thereafter. (Session Laws of 1915 p. 9, Sec. 1).

"Appeals taken from all boards of equalization as now provided by law shall have precedence in the court to which they are taken." (Session Laws 1915, page 147, effective March 11, 1915.

"Any taxpayer feeling aggrieved at the assessment as made by the assessor, or the equalization as made by the county board of equalization, may, during the session of said board, or, if the same

is closed, within ten days after the first Monday in June, file with said assessor as secretary of said board, a written complaint specifying his grievance and the pertinent facts in relation thereto in ordinary and concise language and without repetition, in such manner as to enable a person of common understanding to know what is intended, and said board shall be authorized and empowered to take evidence pertinent to said complaint and for that purpose is authorized to compel the attendance of witnesses and the production of books and papers by subpoena and to correct or adjust the same, as may seem just. And the stenographer of the county court is directed, at the request of the board or taxpayers, to take shorthand notes of such testimony and so transcribe such complaint and evidence, and a full transcript of the action of the board thereon and file the same with his certificate as to its accuracy in the district court, the filing of which transcript shall complete said appeal, which shall, in due course, be examined and reviewed by said court and affirmed, modified or annulled as justice shall demand," etc. (Session Laws 1915, Chap 107, Sec. 2, page 176.

The same Act of the Legislature, in Section 5 thereof, provided:

"This act shall be construed to give remedies and rights in addition to those of appeal heretofore given by statute, but the remedies of resort to the boards and appeal therefrom shall be the sole remedies for the correction of assessments or equalization." (Session Laws 1915, Sec. 5, page 176.

"The full amount of the taxes assessed against the property of any such aggrieved person shall be paid at the time and in the manner provided by law; and if at the time such taxes or any part thereof becomes due, any such appeal is pending, it shall abate and be dismissed upon a showing that

such taxes have not been paid. When such taxes are paid, the persons paying the same shall give notice to the officer authorized to collect them that an appeal involving such taxes has been taken and is pending. It shall be the duty of such collecting officer to hold such taxes so paid separate and apart from other taxes collected by him. If upon the final determination of any appeal, it shall be determined that the taxes were illegally collected as not owing to the state, county or subdivision of the county, the court shall render judgment showing the correct and legal amount of taxes owed by such appellant, and shall issue an order with the court's findings; and if such order show that the taxes so paid are in excess of the legal and correct amount due, the collecting officer shall pay to such person the excess tax, and shall take a receipt therefor. (Section 6, Session Laws of 1915, page 178.).

"In all cases where the illegality of the tax is alleged to arise by reason of some action from which the laws provide no appeal, the aggrieved person shall pay the full amount of the taxes at the time and in the manner provided by law, and shall give notice to the officer collecting the taxes, showing the grounds of complaint and that suit will be brought against the officer for recovery of them. It shall be the duty of such collecting officer to hold such taxes separate and apart from all other taxes collected by him for a period of thirty days, and if within such time summons shall be served upon such officer in a suit for recovery of such taxes, the officer shall further hold such taxes until the final determination of such suit. All such suits shall be brought in the court having jurisdiction thereof, and they shall have precedence therein," etc. (Session Laws 1915, Chap. 107, Sec. 7, page 176.).

"Section 1. The board of county commissioners of each county is hereby authorized to hear and determine allegations of erroneous assessments, mistakes or errors made in assessing or preparing the tax rolls or in the description of land or other property, before the taxes have been paid, on application of any person or persons who shall show by affidavit good cause for not having attended the meeting of the county board of equalization for the purpose of correcting such error, mistake or difference, and if upon such hearing it appears that any personal or real property has been assessed to any person, firm or corporation not owning or claiming to own the same, or that property exempt from taxation has been assessed, it shall be the duty of the board of county commissioners to correct such error, and the county clerk, upon the order of said board, shall issue a certificate of error to the county treasurer, stating the amount of such correction, which amount the treasurer shall deduct from the original assessment or assessed amount; and if upon such hearing it appears that any such tax has been paid through a mistake of fact, either of the party paying the same or of any officer whose duty it is to assess or collect taxes, the board of county commissioners may refund the same, but no refund shall be made because of mistake of law. The amount of taxes ordered refunded, as herein provided, shall be a valid charge against the county and shall be paid out of the sinking fund of the county by the county treasurer, on order of the board of county commissioners. Provided, no refund shall be made in any case where the taxes have been paid for a period of more than one year prior to the claim of such refund, nor shall there be any claim against the county for any taxes on any ground where the same have been paid for a longer period than herein specified." (Session Laws of 1916, page 22, chapter 19.)

At the time this suit was instituted, September 27, 1917, the appellant, and each member of the Osage tribe could have gone before the several boards provided by the laws of the state; could have taken their appeal from these boards to the courts of the state: could have paid the taxes to the county treasurer, with notice of suit for excess taxes, and had the amount returned, if by any chance in the world the statements made in the Bill of Complaint in this case are true. The statutory law of both the State and Federal Government would seem to preclude them from success by injunction. The foregoing laws demonstrate clearly that they have a plain, adequate,and complete remedy at law. The "Due Process of Law" has been clearly stated by the laws of Oklahoma, and the appellant does not plead that it has in any manner attempted to comply with the same, or that it has been denied them.

The Supreme Court of the state has several times held that the foregoing sections of the statue mean what they say, and that equitable remedies will not obtain, but that applications to the boards created, and appeals therefrom is the sole and only remedy. Board of Commissioners of Canadian County vs. Tinklepaugh, 49 Okla. 440, 152 Pacific Rep. 1119; Board of Commissioners of Garfield County v. Field, 162 Pacific Rep. 733; Atchison, T. & S.F. Ry. Co. v. Eldridge, 166 Pacific, 1085; Huckins Hotel v. Commissioners, 166 Pacific Rep. 1043.

The Federal Statutes contain a section much like the Oklahoma section, which makes the statutory remedies exclusive, which section has been construed by the Supreme Court of the United States:

"In the State Railroad Tax Cases this Court, in a careful and thorough opinion delivered by Mr. Justice Miller, stated that 'it has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity;' refered to Section 3224 of the Revised Statutes, which provides that 'no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court; and said that 'though this was intended to apply alone to taxes levied by the United States, it shows the sense of Congress of the evils to be feared if courts of justice could, in any case, interfere with the process of collecting the taxes on which the government depends for its continued existance.' The court then quoted from Dows v. Chicago, and Hannewinkle v. Georgetown, above cited, and proceeded as follows: 'We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes. But we may say that, in addition to illegality, hardship, or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction; and that mere errors or excess in valuation, or hardship or injustice of the law, or any grievance that can be remedied by a suit at law, either before or after payment of taxes, will not justify a court of equity to interpose by injunction to stay collection of a tax." etc. Pittsburg C. C. & St. L. R. Co. v. Board of Public Works 172 U. S. 38, 39.

FORMER SUIT.

This suit involves about 400 of the more than 2,000 allotments involved in the former suit reported in the 193 Federal, 485, 216 Federal (C.C.A.) 883, and dismissed upon motion of the United States in this Court (270), 244 U. S. 663, 61 Law ed. 1377). The record in that suit (No. 270) would indicate that all issues in the present suit were, or could have been involved in the former suit. In the opinion of the trial court 193 Fed., we find:

> Divestments of title through taxation, unlike conveyences, are readily avoided by payment of the taxes. And it is only reasonable to say that it was contemplated the means would be found or supplied by future enactments to pay the taxes the Indians might upon experience fail to pay, and that it was deemed just and prudent under the circumstances to permit the taxation of this portion of the allotted lands while denying the Indians the right to volunarily alienate them."

Congress in 1912 (37 Stat. 86) provided:

> "That until the inherited lands of the deceased members of the Osage Tribe of Indians shall be partitioned or sold the Secretary of the Interior be, and he hereby is, authorized to pay the taxes on said land out of any money due and payable to the heirs from the segragated decedent's funds in the Treasury of the United States." (Sec. 1, Act of April 18, 1912.)

The Congress only gave the Secretary of the Interior the right and authority to pay the taxes on one class of lands, to-wit, the inherited lands of the deceased members; and, only for a certain period, to-wit, until the same were partitioned and sold. This action upon the part of Congress indicates the intention to emacipate the Osage lands for the purpose of taxation, and brings us within the rule mentioned in the **Waller** case, supra, and sustains the holding of the trial Court, that the plaintiff has no interest, and cannot maintain this suit. The United States tenders certain moneys into court in this suit, but the Congress has made no appropriation of funds for this purpose, and the Osage funds have vested in the individual Osage. It is not such a tender that could be enforced.

We respectfully submit that the Circuit Court of Appeals, as well as the United States District Court for the Western District of Oklahoma, rendered a correct judgment, and that the same should be by this Court affirmed.

Respectfully submitted,
Preston A. Shinn
Corbett Cornett,
Attys. for Appellees.

UNITED STATES *v.* BOARD OF COUNTY COMMISSIONERS OF OSAGE COUNTY, OKLAHOMA, ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 309. Argued April 16, 1919.—Decided December 15, 1919.

As the guardian of non-competent Osage Indians, whose surplus allotments are submitted to state taxation, under the Act of June 28, 1906, c. 3572, 34 Stat. 539, the United States may maintain a suit to protect such allottees as a class from being despoiled of their property through arbitrary, excessive and discriminating taxes, imposed upon them by the state tax officials in systematic and intentional disregard of the state laws. P. 132.

The proper officials of the United States (the United States Attorney under direction of the Attorney General) have implied authority to institute and conduct such a suit; and this is recognized by the Act of March 2, 1917, c. 146, 39 Stat. 969, 983, providing for an appraisement of the lands to ascertain the extent of over-assessment. *Id.*

In such a case the United States is not obliged to resort to the remedies afforded to individuals by the state law for the correction of mistakes committed in the tax proceedings, but may invoke the equity jurisdiction to avoid a multiplicity of suits, and secure an adequate remedy for the Indians as a class. P. 133.

254 Fed. Rep. 570, reversed.

THE case is stated in the opinion.

Mr. Leslie C. Garnett, with whom *The Solicitor General* was on the brief, for the United States.

Mr. Preston A. Shinn, with whom *Mr. Corbett Cornett* was on the brief, for appellees.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

Although the subject was fully stated in *McCurdy* v. *United States*, 246 U. S. 263, nevertheless to throw light on this case, we recall the facts concerning the distribution of the land and funds of the Osage Tribe of Indians made under the Act of Congress of June 28, 1906, c. 3572, 34 Stat. 539.

Of the tribal land there were reserved from allotment certain parcels, some of which were used by the United States or the tribe and others of which were used by individuals for the benefit of the tribe. From the remainder, each member was allotted three tracts of 160 acres each, of which one was to be designated and held as a homestead. Any land which remained was also to be allotted. The funds in trust in the hands of the United States were divided pro rata, to be held subject to the supervision of the United States. The oil, gas, coal, and other mineral rights in all the lands were reserved for the benefit of the tribe. The tract selected as a homestead was made inalienable and non-taxable, subject to the action of Congress. The land embraced by other than the homestead allotment, called surplus land, was made inalienable for a period of twenty-five years and non-taxable for three, subject to the action of Congress. Power was conferred, however, on the Secretary of the Interior to give to the allottee a certificate of competency, upon receipt of which the surplus land held by such an allottee became immediately alienable and taxable.

In September, 1917, the United States District Attorney for the Western District of Oklahoma, by direction of the Attorney General, commenced this suit in the name of the United States, for the benefit of named non-competent members of the Osage Tribe and of all other mem-

bers in the same situation, to prevent the enforcement of state and local taxes assessed against the surplus, although taxable, lands of said Indians for the eight years between 1910 and 1917 inclusive.

The defendants were the Board of County Commissioners of Osage County, including the county clerk and county treasurer, officials charged by the laws of the State with the enforcement of the taxes which were assailed. After averring the existence of authority in the United States, in virtue of its guardianship of the Indians and as a result of the terms of the allotment act, to protect and safeguard the interests of the Indians from the enforcement of the illegal taxes complained of, the bill charged that the taxes in issue were "arbitrary, grossly excessive, discriminatory, and unfair, and were made in violation of the rights of the said Osage Indians guaranteed by the Constitution of the United States and the constitution of the State of Oklahoma; . . . that the State Board of Equalization . . . arbitrarily and systematically increased the assessments on Osage Indian lands for the year 1911 to an amount approximately nearly double the original amount of such assessments. . . ." It was averred that the tax assessments made on the Indian lands involved "were made without an inspection or examination of the land . . .; that the said appraisers in making said appraisements discriminated against the lands of the Osage Indians as a class and systematically overvalued the same and systematically undervalued other property in said County; . . . that the assessments so made by said assessors were made in such an arbitrary and capricious manner as to amount to constructive fraud upon the taxpayers, and that the overvaluations made by said assessors were so grossly excessive as to justify the interference of a court of equity. . . ." It was alleged that the assessments complained of were of such a character that the

Secretary of the Interior had endeavored to have them corrected, but without result; that, in consequence of his having called the attention of Congress to the subject, the Act of March 2, 1917, c. 146, 39 Stat. 969, 983, was passed authorizing an appraisement by the said Secretary for the purpose of fixing the extent of the overassessment and that such appraisement, which had been virtually completed, sustained the charges set forth in the bill.

There was annexed to the bill a statement of the result of the appraisement in 36 cases as compared with the assessments complained of. In one case it was alleged that the land of the Indian was assessed at $20 an acre, although by the affidavit of the county clerk it was shown that it was worth $3 per acre. In another case it was alleged that, for the purpose of taxation, the land was shown to be overvalued by 119 per cent. It was further averred that an offer had been made through the Secretary of the Interior to pay all the taxes assessed for all the years assailed upon the basis of the assessment made as the result of the act of Congress, but that the same had been refused, and that process for the sale of the lands for delinquent taxes was immediately threatened. The prayer was for relief by injunction as against the illegal assessments and for action by the court looking to a payment of all delinquent taxes due by non-competent Osage Indians on the basis of the appraisement made under the act of Congress.

On motion the court dismissed the bill on the ground "that the lands involved were by Act of Congress, approved June 28, 1906, declared subject to taxation, and that the plaintiff has no interest in said lands, and has no duty or authority to contest the taxes thereon, or the sale of said lands for unpaid taxes. . . ." On appeal the decree was affirmed on the ground that as the state law afforded adequate means to the United States and the noncompetent Indians to correct errors in assessing

taxes, if any, there was no basis for invoking relief from a court of equity.

The argument here is exclusively directed to two grounds, the one enforced by the trial court and the other sustained by the court below. The first, however, is in argument here expanded into two points of view, since it challenges not only the authority of the officers of the United States to bring the suit, but the power of the United States to authorize them to do it. So far as the latter aspect is concerned, it proceeds upon the assumption that by the Act of 1906 the United States exhausted its power as the protector and guardian of the Osage Indians and as to them had no longer any mission or authority whatever. We pass from this contention without further notice, as it is so obviously opposed to the doctrine upon the subject settled from the beginning and so in conflict with the terms of the act of Congress that nothing more need to be said concerning it. As to the first point of view, the proposition is this: That as the Act of 1906 subjected the surplus lands to taxation, it therefore brought them under the taxing laws of the State, and, it is insisted, that having been so brought, it results that until Congress otherwise provides there exists no lawful authority in an officer of the United States to act in the name of the United States for the purpose of attacking the legality of a tax levied upon said lands under the laws of the State. But although the premise upon which the argument proceeds be admitted, that is, that in subjecting the lands to state taxation it was the purpose of Congress to subject them to the methods of levying and collecting the taxes provided by state law, including the remedial processes for the correction of errors, we fail to understand what relation that concession can have to the case in hand, since on the face of the pleadings the action taken by the United States was not to frustrate the act of Congress by preventing the operation of the state

law, but to prevent the systematic violation of the state law committed for the purpose of destroying the rights created by the act of Congress. The argument therefore disregards the foundation for the relief sought and proceeds upon the assumption that the exertion of power to prevent a perversion of state laws made to defeat the rights which the act of Congress gave is to be treated as a violation of the act of Congress and a refusal to apply the state law.

Certain is it that as the United States as guardian of the Indians had the duty to protect them from spoliation and, therefore, the right to prevent their being illegally deprived of the property rights conferred under the Act of Congress of 1906, the power existed in the officers of the United States to invoke relief for the accomplishment of the purpose stated. Indeed the Act of Congress of 1917, providing for the appraisement of the lands in question, by necessary implication, if not in express terms, treated the power of the officers of the United States to resist the illegal assessments as undoubted.

And the existence of power in the United States to sue which is thus established disposes of the proposition that because of remedies afforded to individuals under the state law the authority of a court of equity could not be invoked by the United States. This necessarily follows because, in the first place, as the authority of the United States extended to all the non-competent members of the tribe it obviously resulted that the interposition of a court of equity to prevent the wrong complained of was essential in order to avoid a multiplicity of suits (see *Union Pacific Ry. Co.* v. *Cheyenne*, 113 U. S. 516; *Smyth* v. *Ames*, 169 U. S. 466, 517; *Cruickshank* v. *Bidwell*, 176 U. S. 73, 81; *Boise Artesian Water Co.* v. *Boise City*, 213 U. S. 276, 283; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 506); in the second place because, as the wrong relied upon was not a mere mistake or error

committed in the enforcement of the state tax laws, but a systematic and intentional disregard of such laws by the state officers for the purpose of destroying the rights of the whole class of non-competent Indians who were subject to the protection of the United States, it follows that such class wrong and disregard of the state statute gave rise to the right to invoke the interposition of a court of equity in order that an adequate remedy might be afforded. *Cummings* v. *National Bank*, 101 U. S. 153; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U. S. 362, 390; *Pittsburgh, etc., Ry. Co.* v. *Backus*, 154 U. S. 421; *Coulter* v. *Louisville & Nashville R. R. Co.*, 196 U. S. 599; *Raymond* v. *Chicago Union Traction Co.*, 207 U. S. 20; *Greene* v. *Louisville & Interurban R. R. Co.*, 244 U. S. 499, 507. In fact the subject is fully covered by the ruling in *Union Pacific R. R. Co.* v. *Weld County*, 247 U. S. 282.

Reversed and remanded for further proceedings in conformity with this opinion.